

STATE OF MICHIGAN
MICHIGAN SUPREME COURT

In re Request for Advisory Opinion Regarding
2018 PA 368 and 2018 PA 369,

Supreme Court Case Nos 159160 and
159201

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**THE MICHIGAN LEGISLATURE'S BRIEF IN SUPPORT OF ITS REQUEST FOR AN
ADVISORY OPINION ON THE CONSTITUTIONALITY OF 2018 PA 368 AND
2018 PA 369**

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STATEMENT OF BASIS OF JURISDICTION

The Michigan Constitution authorizes “either house of the legislature to request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.” Const 1963, art 3, § 8. Both the Michigan Senate and Michigan House of Representatives have timely requested an advisory opinion from this Court on the constitutionality of 2018 PA 368 and 2018 PA 369, which laws will take effect on March 29, 2019. This Court therefore has jurisdiction pursuant to Const 1963, art 3, § 8 and MCR 7.303(B)(3).

STATEMENT OF QUESTIONS PRESENTED

- I. WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETION TO GRANT THE MICHIGAN LEGISLATURE'S REQUEST TO ISSUE AN ADVISORY OPINION IN THIS MATTER?

Michigan Legislature answers: YES

- II. WHETHER CONST 1963, ART 2, § 9 PERMITS THE LEGISLATURE TO ENACT AN INITIATIVE PETITION INTO LAW AND THEN SUBSEQUENTLY AMEND THAT LAW DURING THE SAME LEGISLATIVE SESSION?

Michigan Legislature answers: YES

- III. WHETHER 2018 PA 368 AND 2018 PA 369 WERE ENACTED IN ACCORDANCE WITH CONST 1963, ART 2, § 9?

Michigan Legislature answers: YES

INTRODUCTION

The Michigan Constitution authorizes the Michigan Legislature to seek the opinion of this Court “on important questions of law upon solemn occasions as to the constitutionality of legislation.” Const 1963, art 3, § 8. Recognizing it is the rare occasion on which this Court is properly called upon to exercise its judicial power to issue an advisory opinion, the Michigan Legislature has not made such a request in nearly 40 years.¹ However, such an extraordinary circumstance, one that impacts virtually every employer and millions of employees throughout the state, presents itself here, thereby justifying the exercise of this Court’s discretionary power to issue an advisory opinion.

At the heart of this matter is the authority of the Michigan Legislature to amend an initiated law during the same legislative session in which the Legislature enacted that law. Yet this request concerns much more than a question of legislative power, because absent this Court’s opinion on the constitutionality of two public acts passed by the Legislature and approved by the Governor in December 2018, businesses and employees across Michigan will soon be faced with significant uncertainty with respect to wages and benefits.² This urgent request therefore falls squarely within the proper exercise of this Court’s power to issue an advisory opinion, as it would prevent an unnecessary waste of resources through certain and protracted litigation, while providing needed clarity to businesses and employees regarding the application of important laws governing mandatory wages and employment benefits.

¹ See *Advisory Opinion on Constitutionality of 1982 PA 47*, 418 Mich 49; 340 NW2d 817 (1983) (involving the last known request for an advisory opinion by the Michigan Legislature).

² See, e.g., Oosting, Minimum Wage Group Vows to Sue if GOP ‘Weakens’ Proposal, Detroit News (September 4, 2018) available at <<https://www.detroitnews.com/story/news/local/michigan/2018/09/04/minimum-wage-michigan-proposal/1192695002/>> (accessed on February 28, 2019).

Therefore, the Michigan Legislature respectfully requests that this Honorable Court grant its request for an advisory opinion and find that the subject laws were constitutionally enacted, in response to the following questions submitted to the Court:

1. Does Const 1963, art 2, § 9 permit the Legislature to enact an initiative petition into law and then subsequently amend that law during the same legislative session?
2. Were 2018 PA 368 and 2018 PA 369 enacted in accordance with Const 1963, art 2, § 9?

STATEMENT OF FACTS

The Michigan Constitution reserves to the people the power to propose laws, directly or indirectly, called the initiative. The indirect method, involved here, requires that a law proposed by initiative first be submitted to the Legislature for consideration, which must either enact or reject the proposal within 40 session days from the time it is received. Const 1963, art 2, § 9. When the Legislature adopts a law proposed by initiative, the people are merely proposing the initiated law, and the Legislature is enacting the law. *Frey v Dir of Dep't of Soc Servs*, 162 Mich App 586, 596; 413 NW2d 54, 59, aff'd sub nom *Frey v Dep't of Mgmt & Budget*, 429 Mich 315; 414 NW2d 873 (1987).

Pursuant to this procedure, on July 30, 2018, the Secretary of State filed with the Michigan Legislature an initiative petition proposing the enactment of the “Earned Sick Time Act,” which generally would require that employers provide their employees with paid sick leave. Also, on August 27, 2018, the Secretary of State filed with the Michigan Legislature an initiative petition proposing the enactment of the “Improved Workforce Opportunity Wage Act,” which generally would provide for a new minimum wage.

On September 5, 2018, within the 40 days permitted by the Constitution, the Michigan Legislature voted to enact the Improved Workforce Opportunity Wage Act, which was later assigned 2018 PA 337. (Exhibit 1). Because 2018 PA 337 was not given immediate effect, it was

not scheduled to take effect until March 29, 2019.³ *See Frey*, 429 Mich at 340. Also, on September 5, 2018, within the 40 days permitted by the Constitution, the Michigan Legislature voted to enact the Earned Sick Time Act, which was later assigned 2018 PA 338. (Exhibit 2). 2018 PA 338 was likewise not given immediate effect and therefore was not scheduled to take effect until March 29, 2019. See also Journal of the Senate, No. 66, p 1673 (Exhibit 3).

After enacting the initiative proposals, the Legislature began considering amendments to the new laws, eventually introducing 2018 SB 1171 and 2018 SB 1175 on November 8, 2018. At that time, some groups questioned the authority of the Legislature to amend a voter-initiated law enacted by the Legislature during the same legislative session, frequently citing a conclusory opinion of former Attorney General Frank Kelley that lacked any meaningful legal discussion or analysis.⁴ Although the Legislature steadfastly believed it had the authority to amend the recently enacted initiative proposals, in an effort to resolve any public uncertainty, the Senate Majority Leader requested a formal opinion from Attorney General Bill Schuette regarding the question. On December 3, 2018, Attorney General Schuette formally responded to the request, opining after thorough discussion “that article 2, § 9 of the Michigan Constitution does not prohibit the Legislature from amending a legislatively enacted initiated law during the same legislative session in which the Legislature enacted the initiated law.” OAG, 2018, No. 7,306, p 1, at 5 (December 3, 2018), Exhibit 5.

Shortly thereafter, on December 4, 2018, the Michigan Legislature passed 2018 SB 1171 and 2018 SB 1175. Both of the bills were subsequently approved by the Governor and assigned

³ See House Concurrent Resolution 29 of 2018 (providing for final adjournment of the 99th Legislature on December 28, 2018).

⁴ See, e.g., note 2; see also OAG, 1964, No. 4,303, p 309, at 311 (March 16, 1964), Exhibit 4.

2018 PA 368 (amending the Improved Workforce Opportunity Wage Act) and 2018 PA 369 (amending the Earned Sick Time Act). (See Exhibits 6 and 7). Neither of the amendatory bills were given immediate effect, so they will take effect on March 29, 2019.

On February 13, 2019, mere months after the recent opinion by Attorney General Schuette, a new request for a formal opinion was submitted to Attorney General Dana Nessel concerning the authority of the Legislature to amend a legislatively enacted initiated law during the same legislative session in which the Legislature enacted the initiated law. (See Exhibit 8). The latest request focuses on precisely the same issue addressed by Attorney General Schuette in December 2018, and appears to be seeking a contrary opinion from the newly elected Attorney General. Regardless of the motivation for the request, it nevertheless casts doubt on the status of legislation prescribing the minimum wage rate and other mandatory employment benefits to the detriment of employers and their employees who depend on a stable and defined regulatory environment.

On February 20, 2019, in an effort to finally resolve this issue, and recognizing the necessity for employers and employees in this state to have certainty with respect to pay and benefits as well as the time sensitivities at issue, the Michigan House of Representatives and the Michigan Senate each passed a resolution seeking an advisory opinion from this Court to resolve this important constitutional question.⁵ Requests for an advisory opinion were thereafter promptly filed with this Court.

⁵ Senate Resolution 16 of 2019 and House Resolution 25 of 2019.

ARGUMENT

I. This Court Should Exercise Its Discretion To Grant The Michigan Legislature's Request For An Advisory Opinion.

The Michigan Constitution of 1963 grants this Court the authority to issue an advisory opinion on important questions of law as to the constitutionality of legislation that has yet to go into effect. More specifically, it provides: “Either house of the legislature or the governor may request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.” Const 1963, art 3, § 8.

This request was made following the enactment of 2018 PA 368 and 2018 PA 369 but prior to their effective date and concerns the constitutionality of the legislation. Therefore, for purposes of this Court’s consideration of whether to grant the Legislature’s request to issue an advisory opinion, the relevant inquiry is whether this request concerns “important questions of law” upon a “solemn occasion.”

The requirement that the request concern “important questions of law” has been consistently interpreted to require the party making the request to “particularize any claims of unconstitutionality” on which the party wishes the Court to speak. *In re Request for Advisory Opinion, Enrolled House Bill No 5250 (Being 1975 PA 227)*, 395 Mich 148, 149; 235 NW2d 321 (1975); *In re Advisory Opinion re Constitutionality of 1974 PA 242*, 394 Mich 41, 53; 228 NW2d 772 (1975). “A request stated too broadly cannot be considered.” *In re Request for Advisory Opinion, Enrolled House Bill No 5250*, 395 Mich at 149.

This request for an advisory opinion is narrow and particularized, specifically whether a law proposed by initiative and enacted by the Legislature pursuant to Const 1963, art 2, § 9 can be amended within the same legislative session in which the initiated law was enacted. Accordingly,

the present request is considerably more narrow than previous requests this Court has agreed to consider. See, e.g., *In re Request for Advisory Opinion Regarding Constitutionality of 2005 PA 71*, 474 Mich 1230; 712 NW2d 450 (2006) (granting a request involving the question of whether certain voter identification requirements would “violate either the Michigan Constitution or the United States Constitution”); *In re Request for Advisory Opinion Regarding 2011 PA 38*, 490 Mich 295, 300; 806 NW2d 683 (2011) (granting a request to answer: “(1) whether reducing or eliminating the statutory exemption for public-pension incomes as described in MCL 206.30, as amended, impairs accrued financial benefits of a ‘pension plan [or] retirement system of the state [or] its political subdivisions’ under Const 1963, art 9, § 24; (2) whether reducing or eliminating the statutory tax exemption for pension incomes, as described in MCL 206.30, as amended, impairs a contract obligation in violation of Const 1963, art 1, § 10 or US Const art I, § 10(1); (3) whether determining eligibility for income-tax exemptions on the basis of total household resources, or age and total household resources, as described in MCL 206.30(7) and (9), as amended, creates a graduated income tax in violation of Const 1963, art 9, § 7; and (4) whether determining eligibility for income-tax exemptions on the basis of date of birth, as described in MCL 206.30(9), as amended, violates equal protection of the law under Const 1963, art 1, § 2 or the Fourteenth Amendment of the United States Constitution”).

The request here poses a single dispositive question based on one section of the Michigan Constitution.⁶ It is a narrow, specific, and particularized constitutional question, requiring no factual record to be developed, thereby easily satisfying this requirement.

⁶ Although the request poses two distinct questions, the answer to the first question is almost certainly dispositive of the matter.

Thus, the sole remaining question is whether this constitutes a “solemn occasion” for purposes of Const 1963, art 3, § 8. As was explained at the Constitutional Convention, based on case law interpreting a similar provision in the Massachusetts Constitution, “[b]y a solemn occasion the constitution means some serious and unusual urgent need.” 1 Official Record, Constitutional Convention 1961, p 1543. Both houses of the Legislature have not made a joint request to this Court for an advisory opinion in nearly 40 years and clearly do not make such requests lightly.⁷ Through this process, the Michigan Legislature is requesting expedited judicial review of an important constitutional question that concerns virtually every employer and employee in the state of Michigan. In the private sector alone, there are more than 200,000 businesses and almost 4,000,000 employees that could be impacted by this legislation. Indeed, it is difficult to imagine a circumstance in which an advisory opinion is more needed to provide certainty going forward, given the sheer breadth of impact to the people of this state.

Employers have been operating under the reasonable assumption that 2018 PA 368 and 2018 PA 369 are the current state of the law and are prepared for those changes to go into effect on March 29, 2019. However, if questions regarding the constitutionality of the legislation remain due to a subsequently issued Attorney General opinion and this issue is left unresolved while the parties engage in protracted litigation, employers will be placed in an extremely precarious position. Should they abide by the initiated laws as first enacted by the Legislature or, alternatively, abide by the laws as amended and face potential litigation and enforcement action? It is self-evident that employers of this state need certainty as to the mandatory minimum wage rate and other employment benefits. Not only does a lack of certainty expose employers to potential legal and enforcement actions, there is also the significant financial uncertainty it poses

⁷ See note 1.

on the businesses themselves, including whether layoffs or other significant operational changes may be necessary.

This advisory opinion request asks this Court to circumvent unnecessary litigation and delay and resolve promptly a dispute that requires swift and final action, thereby comporting with the Constitutional Convention delegates' desire that the advisory opinion provision "facilitate the effective and efficient operation of our state government." 1 Official Record Constitutional Convention 1961, p 1543. Thus, the Court should exercise its discretion to grant the Michigan Legislature's request for an advisory opinion.

II. The Michigan Constitution of 1963, art 2, § 9 Does Not Prohibit The Legislature From Enacting An Initiative Petition Into Law And Then Later Amending That Law During The Same Legislative Session.

"The legislative authority of the state can do anything which it is not prohibited from doing by the people through the Constitution of the State or the United States." *Taxpayers of Mich Against Casinos v Michigan*, 471 Mich 306, 327; 685 NW2d 221 (2004) (citing *Attorney General ex rel O'Hara v Montgomery*, 275 Mich 504, 538; 267 NW2d 550 (1936)). The dispositive question before this Court, therefore, is whether the relevant constitutional provision, Const 1963, art 2, § 9, bars the Legislature from amending an initiated law during the same session in which it was initially enacted.

Again, there are two types of initiatives in Michigan, each set forth in separate sections of the Michigan Constitution. There is an initiative to amend the Constitution, which is governed by Const 1963, art 12, § 2, and an initiative to propose a law, which is governed by Const 1963, art 2, § 9. An initiative to amend the Constitution requires more signatures and goes directly to the

ballot for consideration by the voters (a direct initiative).⁸ In contrast, a law proposed by initiative requires fewer signatures and first goes to the Legislature for consideration; if the Legislature fails to enact or reject the proposed law within 40 session days after receiving it, the proposal is then placed on the ballot for consideration by the voters at the next general election (indirect initiative).⁹ The type of initiative involved here is the indirect initiative set forth in Const 1963, art 2, § 9, which provides in pertinent part as follows:

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative, and the power to approve or reject laws enacted by the legislature, called the referendum. The power of initiative extends only to laws which the legislature may enact under this constitution. [Emphasis added].

In order to propose a law by initiative, the proponents must prepare a petition in compliance with the requirements of the Michigan Constitution and Michigan Election Law, and obtain the requisite number of valid signatures within the time periods specified by law. Once the petition and signatures are certified by the Board of State Canvassers, the petition is transmitted by the Secretary of State to the Legislature for review and consideration as follows:

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.¹⁰

⁸ A proposal to amend the Constitution requires signatures from electors totaling at least 10% of the total votes cast at the last gubernatorial election. Const 1963, art 12, § 2.

⁹ A proposal for an initiated law requires signatures from electors totaling at least 8% of the total votes cast at the last gubernatorial election. Const 1963, art 2, § 9.

¹⁰ The right of referendum allows the voters with signatures totaling 5% of the votes cast at the last gubernatorial election to suspend a law enacted by the Legislature until it can be voted on at the next general election. Const 1963, art 2, § 9.

Const 1963, art 2, § 9, ¶3. If the Legislature does not enact the proposal within 40 session days, the proposal is submitted “to the people for approval or rejection at the next general election.” *Id.* Notably, Const 1963, art 2, § 9 only provides the following limitations on the Legislature’s ability to amend a measure approved under that section:

No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail.

Read plainly, this paragraph imposes only two restraints on the Legislature’s ability to amend an initiated law and neither applies to the present question. First, in the case of a *referendum*, a law approved *by the people* can only be amended at a “subsequent session.” Second, in the case of an *initiated law* that is submitted to and adopted *by the people*, unless the measure provides otherwise, it may only be amended by vote of three-fourths of the members of each chamber. In addition to the former being exclusive to a referendum, both restraints are unambiguously limited to laws that are approved or adopted by the people. Consequently, neither restraint applies to an *initiated law* that is enacted *by the Legislature*. In fact, the only language in Const 1963, art 2, § 9 addressing a law that is both proposed by initiative and enacted by the Legislature merely states that it “shall be subject to referendum” and “shall [not] be subject to the veto power of the governor.”

Because it is incontrovertible that Const 1963, art 2, § 9 imposes no constraint, temporal or otherwise, on the Legislature’s ability to amend an initiated law that it enacts, the Legislature is free to amend such law during the same session in which it is enacted. This textual interpretation

is buttressed by the common understanding of this section of the Constitution at the time of adoption.

A. Rules Of Constitutional Construction Require A Plain Examination Of The Words Used And Their Common Understanding At The Time Of Ratification.

“[T]he primary objective of constitutional interpretation, not dissimilar to any other exercise in judicial interpretation, is to faithfully give meaning to the intent of those who enacted the law.” *Nat’l Pride At Work, Inc v Governor*, 481 Mich 56, 67; 748 NW2d 524 (2008). Thus, a court’s “primary goal in construing a constitutional provision is to give effect to the intent of the people of the state of Michigan who ratified the Constitution, by applying the rule of ‘common understanding.’” *UAW v Green*, 498 Mich 282, 286-87; 870 NW2d 867 (2015). As Justice Cooley explained:

A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. ‘For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.’ [1 Cooley, *Constitutional Limitations* (6th ed), p 81.]

“Each provision of a State Constitution is the direct word of the people of the State, not that of the scriveners thereof.” *Mich United Conservation Clubs v Secretary of State*, 464 Mich 359, 373; 630 NW2d 297 (Young, J., concurring) (quoting *Lockwood v Nims*, 357 Mich 517, 565; 98 NW2d 753 (1959) (Black, J., concurring)). A court’s “first inquiry, when interpreting constitutional provisions, ‘is to determine the text’s original meaning to the ratifiers, the people, at the time of ratification.... This is accomplished by ‘applying each term’s plain meaning at the time of ratification.’” *County Road Ass’n of Mich v Governor*, 474 Mich 11, 15; 705 NW2d 680

(2005) (quoting *Wayne Co v Hathcock*, 471 Mich 445, 468-469; 684 NW2d 765 (2004)). To that end, courts examine the precise language used and “apply the plain meaning of terms used in the constitution unless technical legal terms were employed.” *Toll Northville LTD v Twp of Northville*, 480 Mich 6, 11; 743 NW2d 902 (2008); see also *UAW*, 498 Mich at 287 (2015) (citing *Mich United Conservation Clubs*, 464 Mich at 376 (Young, J., concurring) (“Unless we are able to determine that a constitutional provision had some other particularized or specialized meaning in the collective mind of the 1963 electorate, we must give effect to the natural meaning of the language used in the Constitution.”))

Interpretation of a constitutional provision also takes account of “the circumstances leading to the adoption of the provision and the purpose sought to be accomplished.” *People v Tanner*, 496 Mich 199, 226; 853 NW2d 653 (2014) (citation and quotation marks omitted). Moreover, in order to determine the “common understanding,” debates during the Constitutional Convention, as well as the Address to the People, can serve as aids in determining the intent of the ratifiers. *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004). Indeed, this Court has found that those documents are “not controlling, [but] relevant.” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 503 Mich 42, 61; 921 NW2d 247 (2018).

Lastly, when interpreting the Constitution, every provision of the constitution “must be interpreted in the light of the document as a whole.” *Lapeer Co Clerk v Lapeer Circuit Court*, 469 Mich 146, 156; 665 NW2d 452 (2003) (citations omitted). Based upon this principle, appellate courts in the State have found that when a provision of the Constitution does not include language that is present in other provisions, the exclusion was intentional. See, e.g., *House Speaker v Governor*, 443 Mich 560, 590 n36; 506 NW2d 190 (1993); and *Hammel v Speaker of House of Representatives*, 297 Mich App 641, 649-50; 825 NW2d 616 (2012).

B. A Plain Reading Of The Text Of The Constitution Clearly Demonstrates That The Legislature May Amend A Law Initially Proposed By Initiative At Any Time Following Enactment.

Const 1963, art 2, § 9 makes two explicit distinctions that are relevant to the present question: (1) it differentiates between *initiative* and *referendum* petitions, initiatives being new laws proposed by the people and referendum being laws enacted by the Legislature that are either approved or rejected thereafter by the people; and (2) it differentiates between laws enacted *by the Legislature* and those adopted or approved *by the people*. From both distinctions stem the only two limitations that Const 1963, art 2, § 9 imposes on the Legislature vis-à-vis its ability to amend a law enacted under that section: a supermajority vote requirement for an *initiated law adopted by the people* and a subsequent session requirement on a *referendum approved by the people*. Because neither limitation applies to an *initiated law enacted by the Legislature*, under basic principles of constitutional construction, an initiated law can clearly be amended at any time, including within the same session in which it is enacted.

Beginning with the distinction between initiated laws enacted by the Legislature and those adopted by the people, the initiative right provided to the people under the Constitution is the ability to “*propose laws* and to enact and reject laws[.]” Const 1963, art 2, § 9, ¶ 1 (emphasis added). When an initiative is submitted to the Legislature, it is simply a *proposed* law for the Legislature to consider, similar to any other proposed legislation that may be introduced for its consideration. Indeed, the “power of initiative extends only to laws which the legislature may enact under this constitution.” *Id.* At that point, the initiative can be “enacted or rejected by the Legislature.” *Id.* at ¶ 3. However, if the Legislature declines to enact the proposal, then it may be “adopted by the people” at the next general election. If approved by the people, the initiative is no longer considered a legislative enactment and therefore provided additional protections under

Const 1963, art 2, § 9, in the form of a supermajority vote requirement for subsequent amendments, as follows:

[N]o law ***adopted by the people*** at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. [Emphasis added].

This distinction between an initiative enacted by the Legislature and one adopted by the people is also used to comprehensively exempt all initiatives from the veto process. Const 1963, art 2, § 9 provides that “[N]o law **initiated or adopted** by the people shall be subject to the veto power of the governor[.]” [Emphasis added]. Thus, regardless of whether an initiated law is enacted by the Legislature or adopted by the people, the Governor may not veto that law. In contrast, the requirement that initiated laws can only be amended by a three-fourths vote of both chambers of the Legislature is expressly limited to those laws “***adopted*** by the people” and not to laws proposed by the people but enacted by the Legislature. See Const 1963, art 2, § 9, ¶ 5 (emphasis added).

Given that the ratifiers clearly chose to apply the veto exception to initiated laws both enacted by the Legislature and adopted by the people, yet only applied the requirement that subsequent amendments be subject to a supermajority requirement to laws approved by the people, such differentiation was clearly deliberate. Meaning, by the plain language of this section, it is evident that the ratifiers’ intent was to permit the subsequent amendment of a legislatively enacted

initiative by a simple majority vote,¹¹ similar to the typical legislative enactment, a conclusion that has never been in dispute.¹²

It is therefore patently clear upon a simple review of Const 1963, art 2, § 9 that the Legislature can amend or repeal a law that is approved through the initiative process. The only difference is that for laws enacted by the Legislature, only a majority vote is required to do so, whereas for laws adopted by the people at the polls, the supermajority requirement applies.

The next inquiry is whether there is any temporal limitation imposed on the Legislature's ability to amend or repeal an initiated law. Again, a plain reading of Const 1963, art 2, § 9 provides a clear answer, one that centers on the express distinction between a referendum and an initiated law. Generally, pursuant to Article 4 of the State Constitution, there are no time limits or delays imposed on how quickly the Legislature may act to amend or repeal legislation that it has previously enacted. Thus, there would have to be an exception provided either in Const 1963, art 2, § 9, or elsewhere in the Constitution as applied to initiatives, for such a limitation to apply. No such time delay exists, and indeed it is clear from the constitutional text that the absence of such limitation was intentional.

Paragraph 5 of Const 1963, art 2, § 9, provides: "Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session

¹¹ Const 1963, art 4, § 26.

¹² See, e.g., Exhibit 9, OAG, 1976, No. 4,932, p 240 (January 15, 1976) ("It is my opinion that, had the drafters of the Constitution intended that initial enactment of legislation proposed by initiative petition under paragraph 3 would require extraordinary majorities in each house, explicit language to that effect would have been utilized. I interpret the absence of such language as signifying an intent that such laws be adopted by those majorities of the members elected to and serving in each house of the legislature specified elsewhere in Mich Const 1963.... **If a measure proposed by initiative petition is enacted by the Legislature within 40 session days without change or amendment, the legislature can amend or repeal such a measure by majority votes in each house as specified elsewhere in Mich Const 1963.**") (Emphasis added).

thereof.” Meaning, if a law is enacted by the Legislature, subject to a referendum, and then approved by the people, then that law may only be amended by the Legislature at a *subsequent* session. This provision is the *only* part of this rather lengthy section of the Constitution that imposes a temporal restriction on the Legislature’s ability to amend an enacted law, and it is clearly and explicitly limited to one set of circumstances: laws approved by the people through referendum.

In contrast, Const 1963, art 2, § 9 does not impose any temporal limitations or requirements of delay for laws initiated by the people, let alone initiated laws enacted by the Legislature. Under basic principles of constitutional construction and textual analysis, that omission must be viewed as an intentional decision by the ratifiers, because such a delay is expressly imposed on laws approved by referendum. This conclusion is most logical given that once the Legislature enacts an initiative, it is on the same plane as any other legislative enactment, subject to the same requirements for any other legislative amendment, no more and no less. In short, every provision of the Constitution “must be interpreted in the light of the document as a whole,” *Lapeer Co Clerk*, 469 Mich at 156, and when a provision of the Constitution does not include language that is present in other provisions, the exclusion is deemed intentional. See, e.g., *House Speaker*, 443 Mich at 590, n36; *Hammel*, 297 Mich App at 649-50.

C. This Textual Interpretation Of The Constitution Is Unequivocally Supported By The History Of Initiatives In Michigan And The Constitutional Convention Of 1961.

Interpretation of a constitutional provision must also take account of “the circumstances leading to the adoption of the provision and the purpose sought to be accomplished.” *Tanner*, 496 Mich at 226. Moreover, in order to determine the “common understanding,” debates during the Constitutional Convention, as well as the Address to the People, can serve as aids in determining the intent of the ratifiers. *Nutt*, 469 Mich at 574.

While the right of constitutional initiative was included in the 1908 Constitution as originally adopted, it was not until 1913 that the Legislature proposed an amendment to the Constitution to provide for the right of statutory initiative, which was approved by the electorate later that same year. The statutory initiative process was incorporated into the legislative section of the Constitution, Const 1908, art 5, § 1, in pertinent part as follows:

Legislative power; initiative; referendum.

Sec. 1. The legislative power of the state of Michigan is vested in a senate and house of representatives; *but the people reserve to themselves the power to propose legislative measures, resolutions and laws*; to enact or reject the same at the polls independently of the legislature; and to approve or reject at the polls any act passed by the legislature, except acts making appropriations for state institutions and to meet deficiencies in state funds. The first power reserved by the people is the initiative.... Provided, that no law shall be enacted by the initiative that could not under this constitution be enacted by the legislature.... The law proposed by such petition shall be either enacted or rejected by the legislature without change or amendment within 40 days from the time such petition is received by the legislature.

No act initiated or adopted by the people, shall be subject to the veto power of the governor, *and no act adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in said initiative measure, but the legislature may propose such amendments, alterations or repeals to the people.* Acts adopted by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. [Emphasis added].

Under the 1908 Constitution, therefore, if a proposed initiative was enacted by the Legislature, it could be amended like any other legislation, but if the Legislature declined to act on the proposal and it was later approved by the people at the polls, it could then only be amended or repealed by

the people unless otherwise provided in the initiative.¹³ Meaning the Legislature had no amendment rights whatsoever for a proposal adopted by the people.

There was a lengthy discussion at the 1961 Constitutional Convention on this issue and, specifically, whether the Legislature should be provided the ability to amend or repeal an initiated law adopted by the people, as follows:

Mr. Kuhn: I think it is interesting to note this. I know we do not have a lot of time to explain this very complicated thing, but what are the rights of the legislature after the people start this petition and have the 10 [sic] percent of the people who voted for governor? They must accept it within 40 days, and accept it in toto, or they must place it on the ballot. Now, what happens if they place it on the ballot and the people adopt it? They lose control of it. They can't amend it, they can't repeal it, and they can't change it in anyway unless the people give them consent in their initiative petition, or unless they go back to the people and ask them to do this. This makes it rather strong.

The only time we have had an initiative matter that went through was the oleomargarine back in 1950. The legislature saw what the people wanted, and had the pulse and the feeling, *and adopted it to get away from this control factor so that they could keep control of the matter.*

This is a very good thing. It's tough. We want to make it tough. It should not be easy. The people should not be writing the laws. That's what we have a senate and house of representatives for....

Mr. Wanger: ...Mr. Kuhn, isn't there another difference between initiative and referendum, namely: that referendum cannot result in having a statute on the books which it takes a popular vote to repeal? Whereas, the initiative, if the initiated statute is adopted, means that

¹³ From a practical perspective, this was not much of an issue, because the constitutional initiative route was much more popular at that time, with only one initiated law being successfully proposed between 1913 and 1961. In 1948, petitions qualified a statutory proposal that would render a 1901 statute prohibiting the sale of colored margarine of no effect. The Legislature enacted the proposal, but opponents of the measure invoked the referendum process and the statute did not become operative until passed by the people in 1950.

the people, in order to make any changes in that statute, have to vote; and the legislature cannot vote to change it.

Mr. Kuhn: Well, not exactly. I'll try to explain this a little bit, Mr. Wanger. *If the legislature sees fit to adopt the petition of the initiative as being sent out, if the legislature in their wisdom feel it looks like it is going to be good, and they adopt it in toto, then they have full control. They can amend it and do anything they see fit.* But if they do not, and then you start an initiative petition and it goes through and is adopted by the people without the legislature doing it, then they are precluded from disturbing it. 2 Official Record, Constitutional Convention 1961, Page 2394-2395 (emphasis added).

The delegates had no concerns whatsoever about the fact that if the proposed law was enacted by the Legislature, it then assumed control of the law and could amend it, repeal it, or otherwise do whatever the Legislature so chose, consistent with its authority for any other legislative enactment. Clearly, it was intended that if the Legislature enacted a law proposed by initiative, it would retain “full control,” and that was indeed the preferred result, because it is the Legislature that should be enacting the laws of this state as a matter of course. The delegates did, however, express reservations about the lack of ability to ever amend or repeal an initiative *approved by the people*. A discussion ensued concerning the best manner in which to rectify this situation while still protecting the law that was approved by the people at the polls, including whether a supermajority requirement should be imposed or a period of delay during which such a proposal could not be amended or repealed. The proposed limitation on when the Legislature could amend such a law was expressly rejected in favor of the three-fourths vote requirement, as follows:

Mr. Kuhn: [W]ould [the delegate] include in his proposed amendment something to the effect of this being done in a subsequent legislative session....?”

Mr. Hutchinson: [W]e [the committee] thought that this $\frac{3}{4}$ vote requirement would be a sufficient safeguard and that the time element would become very secondary. In fact,...[Delegate Downs] didn't know whether the time element would work out very well.

Mr. Downs: I think the $\frac{3}{4}$ vote is a reasonable requirement. I prefer it a little bit to the time concept. I think it is a little better way to handle the problem.

Id. at 2396.

The history of Const 1963, art 2, § 9 therefore clearly reinforces the already readily apparent conclusion based on the text that the Legislature retains full control of a legislatively enacted initiative, meaning it can amend or repeal such law at any time with a majority vote, including during the same session. The drafters deliberately treated initiated laws passed by the people differently by imposing a supermajority vote requirement for amendments, yet expressly rejected the notion of a time delay before such amendments could occur. The fact that this concept was both discussed and declined further demonstrates that the delegates understood that to impose a delay on when the Legislature could amend an initiated law required language specifying such a requirement because in its absence, no such delay would apply. Indeed, the only circumstance under which the delegates saw fit to impose a time delay was for a referendum. These decisions were all clearly reflected in the text of Const 1963, art 2, § 9, and upheld by the people when they voted to ratify the 1963 Constitution.

D. Laws Proposed By Initiative Are On Equal Footing With Any Other Legislative Enactment And So May Be Similarly Amended During the Same Session In Which They Are Enacted.

In addition to being supported by the plain text of the Constitution and historical records, the conclusion that the Legislature is free to amend an initiated law during the same session in which it is adopted is consistent with well settled judicial precedent that laws proposed by initiative are subject to the same constitutional requirements as laws initiated by the Legislature unless otherwise provided in Const 1963, art 2, § 9. More than 70 years ago, in *Leininger v Alger*, 316 Mich 644; 26 NW2d 348 (1947), this Court held that the title object clause set forth in Const 1908,

art 5, § 21 (now Const 1963, art 4, § 24) applied to initiated laws. See also *Automobile Club of Mich Committee for Lower Rates Now v Secretary of State (On Remand)*, 195 Mich App 613; 491 NW2d 269 (1992) (article 4, § 25's republication requirement applied to petition to initiate legislation).

Decades later, in *Frey*, the Court of Appeals addressed whether the two-thirds vote requirement for giving legislation immediate effect under Const 1963, art 4, § 27 applied to an initiated law enacted by the Legislature pursuant to Const 1963, art 2, § 9, even when the petition itself provided it was to be given immediate effect. The Court flatly rejected the argument that Article 4 did not apply to Article 2 of the Constitution, noting that Const 1963, art 2, § 9 provides that “no law initiated or adopted by the people shall be subject to the veto power of the Governor.” Given that the Governor’s veto power is conferred by Const 1963, art 4, § 33, had the delegates “not meant to have sections of Article 4 apply to Article 2, the language exempting initiatives from the Governor’s veto power would not have been necessary.” *Id.* at 598.

The Court of Appeals also rejected the notion that the language of the petition preempted application of Const 1963, art 4, § 27, because laws proposed by initiative are on “equal footing” with laws proposed by the Legislature. The Court explained its decision as follows:

Acceptance of defendants’ position would place laws proposed by the initiative on a superior, not equal, footing with legislative acts not proposed by the people. Since everything that emerges from the Legislature is legislation, all legislative acts must be on equal footing. Stated in other language, once it is conceded that it is necessary to refer to Article 4 in order to determine the effective date of initiated legislation that does not refer to an effective date, it becomes immediately apparent that the wall that is said to exist between article 2 and article 4 does not exist. *Id.* at 600.

On appeal, this Court likewise easily disposed of the argument that Article 4 did not apply to Article 2, or that it only applied as to the procedural requirements: “[W]e have never adopted the distinction proposed by defendant and intervening defendants. We expressly reject that

distinction.” 429 Mich at 324. After thoroughly examining judicial precedent and the dialogue of the constitutional conventions, this Court concluded that absent a specific exception, Article 4 applied to Article 2 and, specifically Const 1963, art 4, § 27 applied to initiated laws enacted by the Legislature. *Id.* at 335 (“The common understanding of this provision is that it applies to initiated laws enacted by the Legislature because it does not provide an exception for initiated laws enacted by the Legislature.”)

In sum, it is well settled that an initiated law enacted by the Legislature is on equal footing with legislation enacted in the normal course. Because it is indisputable that Article 4 does not prohibit the Legislature from amending non-initiated legislation that it enacts during that same session, which it has often done without controversy,¹⁴ and because there is no contrary authority in Const 1963, art 2, § 9, judicial precedent dictates that an initiated law enacted by the Legislature may be similarly amended during the same session in which it was originally enacted.

III. Public Act 368 Of 2018 And Public Act 369 Of 2018 Were Enacted In Accordance With Const 1963, art 2, § 9.

The Legislature enacted the proposed initiatives without change within 40 days as permitted by Const 1963, art 2, § 9. The Legislature then passed amendments to both legislatively enacted laws by a majority vote, which is also permitted by the Constitution. Because there is no temporal limitation restraining the Legislature’s unquestioned authority to amend legislatively enacted initiatives, 2018 PA 368 and 2018 PA 369 were both enacted in accordance with Const 1963, art 2, § 9.

¹⁴ See, e.g., 2018 SB 1162 and 2018 SB 1094 (both amending MCL 437.1517a and both enacted during December 2018).

CONCLUSION

For all of the reasons outlined herein, the Michigan Legislature requests the following from this Honorable Court:

1. Grant the Michigan Legislature's Request for an Advisory Opinion;
2. Issue an Opinion holding that Const 1963, art 2, § 9 permits the Michigan Legislature to enact an initiative petition into law and then subsequently amend that law during the same legislative session;
3. Issue an Opinion holding that 2018 PA 368 and 2018 PA 369 were enacted in accordance with Const 1963, art 2, § 9; and
4. Such other relief that this Court deems equitable and just.

Respectfully submitted,
HONIGMAN LLP

Attorneys for Michigan Senate and Michigan House
of Representatives

Dated: March 5, 2019

By: /s/ Andrea L. Hansen
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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2019, I electronically filed the above document with the Clerk of the Court using the ECF system, through which notification of such filing was sent to all attorneys of record in this matter.

/s/ Diane Pohl

EXHIBIT 1

INITIATION OF LEGISLATION

An initiation of legislation to enact the Improved Workforce Opportunity Wage Act which would fix minimum wages for employees within this state; prohibit wage discrimination; provide for a wage deviation board; provide for the administration and enforcement of the act; prescribe penalties for the violation of the act; and supersede certain acts and parts of acts including 2014 PA 138.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1.

This act shall be known and may be cited as the "improved workforce opportunity wage act".

Sec. 2.

As used in this act:

(a) "Commissioner" means the director of the department of licensing and regulatory affairs.

(b) "Employ" means to engage, suffer, or permit to work.

(c) "Employee" means an individual not less than 16 years of age employed by an employer on the premise of the employer or at a fixed site designated by the employer, and includes a minor employed subject to section 15(1) of the youth employment standards act, 1978 PA 90, MCL 409.115.

(d) "Employer" means a person, firm, or corporation, including this state and its political subdivisions, agencies, and instrumentalities, and a person acting in the interest of the employer, who employs 2 or more employees at any 1 time within a calendar year. An employer is subject to this act during the remainder of that calendar year. Except as specifically provided in the franchise agreement, as between a franchisee and franchisor, the franchisee is considered the sole employer of workers for whom the franchisee provides a benefit plan or pays wages.

Sec. 3.

An employer shall not pay any employee at a rate that is less than prescribed in this act.

Sec. 4(1). Subject to the exceptions specified in this act, the minimum hourly wage rate is:

- a. Beginning January 1, 2019, \$10.00.
- b. Beginning January 1, 2020, \$10.65.
- c. Beginning January 1, 2021, \$11.35.
- d. Beginning January 1, 2022, \$12.00.

(2) Every October beginning in October, 2022, the state treasurer shall calculate an adjusted minimum wage rate. The adjustment shall increase the minimum wage by the rate of inflation. The increase shall be calculated by multiplying the otherwise applicable minimum wage by the 12-month percentage increase, if any, in the consumer price index for urban wage earners and clerical workers, CPI-W, or a successor index, as published by the bureau of labor statistics of the United States department of labor, based upon the most recent 12-month period for which data are available. The adjusted minimum wage rate shall be published by November 1 of the year it is calculated and shall be effective beginning January 1 of the succeeding year.

(3) An increase in the minimum hourly wage rate as prescribed in subsection (2) does not take effect if the unemployment rate determined by the bureau of labor statistics, United States department of labor, for this state is 8.5% or greater for the year preceding the year of the prescribed increase.

Sec. 4a.

(1) Except as otherwise provided in this act, an employee shall receive compensation at not less than 1-1/2 times the regular rate at which the employee is employed for employment in a workweek in excess of 40 hours.

(2) This state or a political subdivision, agency, or instrumentality of this state does not violate subsection (1) with respect to the employment of an employee in fire protection activities or an employee in law enforcement activities, including security personnel in correctional institutions, if any of the following apply:

- (a) In a work period of 28 consecutive days, the employee receives for tours of duty, which in the aggregate exceed 216 hours, compensation for those hours in excess of 216 at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.
- (b) For an employee to whom a work period of at least 7 but less than 28 days applies, in the employee's work period the employee receives for tours of duty, which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in the employee's work period as 216 bears to 28 days, compensation for those excess hours at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.
- (c) If an employee engaged in fire protection activities would receive overtime payments under this act solely as a result of that employee's trading of time with another employee pursuant to a voluntary trading time arrangement,

overtime, if any, shall be paid to employees who participate in the trading of time as if the time trade had not occurred. As used in this subdivision, "trading time arrangement" means a practice under which employees of a fire department voluntarily substitute for one another to allow an employee to attend to personal matters, if the practice is neither for the convenience of the employer nor because of the employer's operations.

(3) This state or a political subdivision, agency, or instrumentality of this state engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or developmentally disabled who reside on the premises does not violate subsection (1) if both of the following conditions are met:

- (a) Pursuant to a written agreement or written employment policy arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted instead of the workweek of 7 consecutive days for purposes of overtime computation.
- (b) For the employee's employment in excess of 8 hours in a workday and in excess of 80 hours in the 14-day period, the employee receives compensation at a rate of 1-1/2 times the regular rate, which shall be not less than the statutory minimum hourly rate at which the employee is employed.

(4) Subsections (1), (2), and (3) do not apply to any of the following:

- (a) An employee employed in a bona fide executive, administrative, or professional capacity, including an employee employed in the capacity of academic administrative personnel or teacher in an elementary or secondary school. However, an employee of a retail or service establishment is not excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in the employee's work week that the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.
- (b) An individual who holds a public elective office.
- (c) A political appointee of a person holding public elective office or a political appointee of a public body, if the political appointee described in this subdivision is not covered by a civil service system.
- (d) An employee employed by an establishment that is an amusement or recreational establishment, if the establishment does not operate for more than 7 months in a calendar year.
- (e) An employee employed in agriculture, including farming in all its branches, which among other things includes: cultivating and tilling soil; dairying; producing, cultivating, growing, and harvesting agricultural or horticulture commodities; raising livestock, bees, fur-bearing animals, or poultry; and a practice, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage, or delivery to market or to a carrier for transportation to market or processing or preserving perishable farm products.
- (f) An employee who is not subject to the minimum hourly wage provisions of this act.

(5) The director of the department of licensing and regulatory affairs shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms used in subsection (4).

(6) For purposes of administration and enforcement, an amount owing to an employee that is withheld in violation of this section is unpaid minimum wages under this act.

(7) The legislature shall annually appropriate from the general fund to each political subdivision affected by subsection (2) an amount equal to the difference in director labor costs before and after the effective date of this act arising from any change in existing law that results from the enactment of subsection (2) and incurred by the political subdivision.

(8) In lieu of monetary overtime compensation, an employee subject to this act may receive compensatory time off at a rate that is not less than 1-1/2 hours for each hour of employment for which overtime compensation is required under this act, subject to all of the following:

- (a) The employer must allow employees a total of at least 10 days of leave per year without loss of pay and must provide the compensatory time to the employee under either of the following:
 - (i) Applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other written agreement between the employer and representative of the employee.
 - (ii) If employees are not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to its employees that provides employees with a voluntary option to receive compensatory time off for overtime work when there is an express, voluntary written request to the employer by an individual employee for compensatory time off in lieu of overtime pay before the performance of any overtime assignment.
- (b) The employee has not earned compensatory time in excess of the applicable limit prescribed by subdivision (d).
- (c) The employee is not required as a condition of employment to accept or request compensatory time. An employer shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce an employee for the purpose of interfering with the employee's rights under this section to request or not request compensatory time off in lieu of payment of overtime compensation for overtime hours, or requiring an employee to

use compensatory time. In assigning overtime hours, an employer shall not discriminate among employees based upon an employee's choice to request or not request compensatory time off in lieu of overtime compensation. An employer who violates this subsection is subject to a civil fine of not more than \$1,000.00.

- (d) An employee may not accrue more than a total of 240 hours of compensatory time. An employer shall do both of the following:
 - (i) Maintain in an employee's pay record a statement of compensatory time earned by that employee in the pay period that the pay record identifies.
 - (ii) Provide an employee with a record of compensatory time earned by or paid to the employee in a statement of earnings for the period in which the compensatory time is earned or paid.
- (e) Upon the request of an employee who has earned compensatory time, the employer shall, within 30 days following the request, provide monetary compensation for that compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work.
- (f) An employee who has earned compensatory time authorized under this subsection shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work. A terminated employee's receipt of or eligibility to receive monetary compensation for earned compensatory time shall not be used by either of the following:
 - (i) The employer to oppose an employee's application for unemployment compensation under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.
 - (ii) The state to deny unemployment compensation or diminish an employee's entitlement to unemployment compensation benefits under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.
- (g) An employee shall be permitted to use any compensatory time accrued under this subsection for any reason unless use of the compensatory time for the period requested will unduly disrupt the operations of the employer.
- (h) Unless prohibited by a collective bargaining agreement, an employer may terminate a compensatory time plan upon not less than 60 days' notice to employees.
- (i) As used in this subsection:
 - (i) "Compensatory time" and "compensatory time off" mean hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.
 - (ii) "Overtime assignment" means an assignment of hours for which overtime compensation is required under this act.
 - (iii) "Overtime compensation" means the compensation required under this section.

Sec. 4b.

(1) An employer may pay a new employee who is less than 20 years of age a training hourly wage of \$4.25 for the first 90 days of that employee's employment. The hourly wage authorized under this subsection is in lieu of the minimum hourly wage otherwise prescribed by this act.

(2) Except as provided in subsection (1), the minimum hourly wage for an employee who is less than 18 years of age is 85% of the general minimum hourly wage established in section 4.

(3) An employer shall not displace an employee to hire an individual at the hourly wage authorized under this section. As used in this subsection, "displace" includes termination of employment or any reduction of hours, wages, or employment benefits.

(4) A person who violates subsection (3) is subject to a civil fine of not more than \$1,000.00.

Sec. 4c.

On petition of a party in interest or on his or her own initiative, the commissioner shall establish a suitable scale of rates for apprentices, learners, and persons with physical or mental disabilities who are clearly unable to meet normal production standards. The rates established under this section may be less than the regular minimum wage rate for workers who are experienced and who are not disabled.

Sec. 4d.

- (1) The minimum hourly wage rate of an employee shall be established under subsection (2) if all of the following occur:
 - (a) The employee receives gratuities in the course of his or her employment.
 - (b) The gratuities described in subdivision (a) equal or exceed the difference between the minimum hourly wage rate established under subsection (2) and the minimum hourly wage established under section 4.
 - (c) The gratuities are proven gratuities as indicated by the employee's declaration for purposes of the federal insurance contributions act, 26 USC 3101 to 3128.
 - (d) The entirety of the gratuities are retained by the employee who receives them, except as voluntarily shared with other employees who are directly or indirectly part of the chain of service and whose duties are not primarily

managerial or supervisory.

- (e) The employee was informed by the employer of the provisions of this section in writing, at or before the time of hire, and gave written consent.

(2) For purposes of subsection (1) the minimum hourly wage rate of an employee shall be 48% of the minimum hourly wage rate established under section 4 effective January 1, 2019; beginning January 1, 2020, it shall be 60% of the minimum hourly wage rate established under section 4; beginning January 1, 2021, it shall be 70% of the minimum hourly wage rate established under section 4; beginning January 1, 2022, it shall be 80% of the minimum hourly wage rate established under section 4; beginning January 1, 2023, it shall be 90% of the minimum hourly wage rate established under section 4; and beginning January 1, 2024 and thereafter, it shall be 100% of the minimum hourly wage rate established under section 4.

(3) As used in this section, "gratuities" means tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered to that guest, patron, or customer and that the employee reports to the employer for purposes of the federal insurance contributions act, 26 USC 3101 to 3128.

(4) Gratuities will remain property of the employee who receives them, except pursuant to a valid and voluntary tip sharing agreement outlined in subsection (1)(d) above, regardless of whether the employer pays the lower tipped hourly wage described in subsection (2) or the full minimum hourly rate established under section 4. Gratuities and service charges paid to an employee are in addition to, and may not count towards, wages due to the employee.

(5) Employers must provide employees and consumers written notice of their plan to distribute service charges.

(6) Employer shall keep records showing compliance with provisions of Section 4d for no less than 3 years from the date of employee's last pay period.

Sec. 5.

(1) The governor shall appoint, with the advice and consent of the senate, a wage deviation board composed of 3 representatives of the employers, 3 representatives of the employees, and 3 persons representing the public. One of the 3 persons representing the public shall be designated as chairperson. Members shall serve for terms of 3 years, except that of the members first appointed, 1 from each group shall be appointed for 1 year, 1 for 2 years, and 1 for 3 years. The commissioner shall be secretary of the wage deviation board.

(2) A majority of the members of the board constitute a quorum, and the recommendation or report of the board requires a vote of not less than a majority of its members. The business which the wage deviation board may perform shall be conducted at a public meeting of the board held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by that act.

(3) A writing prepared, owned, used, in the possession of, or retained by the wage deviation board in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(4) The per diem compensation of the board and the schedule for reimbursement of expenses shall be established annually by the legislature.

(5) The wage deviation board may request data of any employer, subject to the provisions of this act, as to the wages paid and hours worked by the employer's employees and may hold hearings as necessary in the process of obtaining this information.

(6) The wage deviation board shall submit its report to the commissioner, who shall file it in his or her office as a public record together with the regulations established by the board.

(7) At any time after a deviated wage rate has been in effect for 6 months or more, the wage deviation board may reconsider the rate.

Sec. 6.

The commissioner may promulgate rules necessary for administration of this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 7.

An employer who is subject to this act or any regulation or order issued under this act shall furnish each employee with a statement of the hours worked by the employee and of the wages paid to the employee, listing deductions made each pay period. The employer shall furnish the commissioner, upon demand, a sworn statement of the wage information. These records shall be open to inspection by the commissioner, his or her deputy, or any authorized agent of the department at any reasonable time. An employer subject to this act or any regulation or order issued under this act shall keep a copy of this act and regulations and orders promulgated under this act posted in a conspicuous place in the workplace that is accessible to employees. The commissioner shall furnish copies of this act and the regulations and orders to employers without charge.

Sec. 8.

The commissioner shall administer and enforce this act and, at the request of the wage deviation board, may investigate and ascertain the wages of employees of an employer subject to this act. The commissioner and the commissioner's employees shall not reveal facts or information obtained in the course of official duties, except as when required by law, to

report upon or take official action or testify in proceedings regarding the affairs of an employer subject to this act.

Sec. 9.

(1) If an employer violates this act, the employee affected by the violation, at any time within 3 years, may do any of the following:

- (a) Bring a civil action for the recovery of the difference between the amount paid and the amount that, but for the violation, would have been paid the employee under this act and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as are allowed by the court.
- (b) File a claim with the commissioner who shall investigate the claim.

(2) If the commissioner determines there is reasonable cause to believe that the employer has violated this act and the commissioner is subsequently unable to obtain voluntary compliance by the employer within a reasonable period of time, the commissioner shall bring a civil action under subsection (1)(a). The commissioner may investigate and file a civil action under subsection (1)(a) on behalf of all employees of that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance of a lesser wage by the employee is not a bar to the action.

(3) In addition to bearing liability for civil remedies described in this section, an employer who fails to pay the minimum hourly wage in violation of this act, or who violates a provision of section 4a governing an employee's compensatory time, is subject to a civil fine of not more than \$1,000.00.

Sec. 10.

(1) This act does not apply to an employer that is subject to the minimum wage provisions of the fair labor standards act of 1938, 29 USC 201 to 219, unless those federal minimum wage provisions would result in a lower minimum hourly wage than provided in this act. Each of the following exceptions applies to an employer who is subject to this act only by application of this subsection:

- (a) Section 4a does not apply.
- (b) This act does not apply to an employee who is exempt from the minimum wage requirements of the fair labor standards act of 1938, 29 USC 201 to 219.

(2) Notwithstanding subsection (1), an employee shall be paid in accordance with the minimum wage and overtime compensation requirements of sections 4 and 4a if the employee meets either of the following conditions:

- (a) He or she is employed in domestic service employment to provide companionship services as defined in 29 CFR 552.6 for individuals who, because of age or infirmity, are unable to care for themselves and is not a live-in domestic service employee as described in 29 CFR 552.102.
- (b) He or she is employed to provide child care, but is not a live-in domestic service employee as described in 29 CFR 552.102. However, the requirements of sections 4 and 4a do not apply if the employee meets all of the following conditions:
 - (i) He or she is under the age of 18.
 - (ii) He or she provides services on a casual basis as defined in 29 CFR 552.5.
 - (iii) He or she provides services that do not regularly exceed 20 hours per week, in the aggregate.

(3) This act does not apply to persons employed in summer camps for not more than 4 months or to employees who are covered under section 14 of the fair labor standards act of 1938, 29 USC 214.

(4) This act does not apply to agricultural fruit growers, pickle growers and tomato growers, or other agricultural employers who traditionally contract for harvesting on a piecework basis, as to those employees used for harvesting, until the board has acquired sufficient data to determine an adequate basis to establish a scale of piecework and determines a scale equivalent to the prevailing minimum wage for that employment. The piece rate scale shall be equivalent to the minimum hourly wage in that, if the payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity, he or she receives an amount not less than the hourly minimum wage.

(5) Notwithstanding any other provision of this act, subsection (1)(a) and (b) and subsection (2) do not deprive an employee or any class of employees of any right that existed on September 30, 2006 to receive overtime compensation or to be paid the minimum wage.

Sec. 11.

An employer that discharges or in any other manner discriminates against an employee because the employee has served or is about to serve on the wage deviation board or has testified or is about to testify before the board, or because the employer believes that the employee may serve on the board or may testify before the board or in any investigation under this act, and any person who violates any provision of this act or of any regulation or order issued under this act, is guilty of a misdemeanor.

Sec. 12.

Any employer that consistently discharges employees within 10 weeks of their employment and replaces the discharged employees without work stoppage is presumed to have discharged them to evade payment of the wage rates established in

this act and is guilty of a misdemeanor.

Sec. 13.

(1) An employer having employees subject to this act shall not discriminate between employees within an establishment on the basis of sex by paying wages to employees in the establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility and that is performed under similar working conditions, except if the payment is made under 1 or more of the following:

- (a) A seniority system.
- (b) A merit system.
- (c) A system that measures earnings by quantity or quality of production.
- (d) A differential based on a factor other than sex.

(2) An employer that is paying a wage differential in violation of this section shall not reduce the wage rate of an employee to comply with this section.

(3) For purposes of administration and enforcement, any amount owing to an employee that has been withheld in violation of this section is considered unpaid minimum wages under this act.

Sec. 14.

An employer operating a massage establishment as defined in section 2 of former 1974 PA 251 that violates this act is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

Sec. 15.

(1) Except as provided in subsection (2), this act shall supersede any acts or parts of acts inconsistent with or in conflict with this act, but only to the extent of such inconsistency or conflict.

(2) This act does not repeal, abrogate, amend, limit, modify, supersede, or otherwise affect Act No. 166 of Public Acts of 1965, as amended, being sections 408.551 to 408.558 of the Michigan Compiled Laws, or any other prevailing wage law.

(3) Any reference in any law to 2014 Public Act 138, the Workforce Opportunity Wage Act, or to the state minimum wage law shall be considered a reference to this act.

EXHIBIT 2

INITIATION OF LEGISLATION

An initiation of legislation to provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 1. This act shall be known and may be cited as the "earned sick time act".

Sec. 2. As used in this act:

- (a) "Department" means the department of licensing and regulatory affairs.
- (b) "Director" means the director of the department of licensing and regulatory affairs or his or her designee.
- (c) "Domestic partner" means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships. "Committed relationship" means one in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any relationship between individuals of the same or different sex that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including, but not limited to, a civil union.
- (d) "Domestic violence" has the same meaning as provided in section 1 of 1978 PA 389, MCL 400.1501.
- (e) "Earned sick time" means time off from work that is provided by an employer to an employee, whether paid or unpaid, that can be used for the purposes described in subsection (1) of section 4 of this act.
- (f) "Employee" means an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government.
- (g) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals, except that employer does not include the United States government.
- (h) "Family member" includes all of the following:
 - (i) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis.
 - (ii) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child.
 - (iii) A person to whom the employee is legally married under the laws of any state or a domestic partner.
 - (iv) A grandparent.
 - (v) A grandchild.
 - (vi) A biological, foster, or adopted sibling.
 - (vii) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
- (i) "Health care professional" means any of the following:
 - (i) Any person licensed under federal law or the law of this state to provide health care services, including, but not limited to, nurses, doctors, and emergency room personnel.
 - (ii) A certified midwife.
- (j) "Retaliatory personnel action" means any of the following:
 - (i) Denial of any right guaranteed under this act.
 - (ii) A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act.
 - (iii) Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.
 - (iv) Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.
- (k) "Sexual assault" means any act that constitutes a violation of section 520b, 520c, 520d, 520e, 520f, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, 750.520f, and 750.520g.
- (l) "Small business" means an employer for which fewer than 10 individuals work for compensation during a given week. In determining the number of individuals performing work for compensation during a given week, all individuals performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. An employer is not a small business if it maintained 10 or more employees on its payroll during any 20 or more calendar workweeks in either the current or the preceding calendar year.

Sec. 3. (1) Each employer shall provide earned sick time to each of the employer's employees in this state.

- (a) Employees of a small business shall accrue a minimum of one hour of earned sick time for every 30 hours worked but shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. If an employee of a small business accrues more than 40 hours of earned sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit. Employees of a small business must be entitled to use paid earned sick time before using unpaid earned sick time.
- (b) All other employees shall accrue a minimum of one hour of paid earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit.
- (c) Earned sick time shall carry over from year to year, but a small business is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, and other employers are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.

(2) Earned sick time as provided in this section shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. An employee may use accrued earned sick time as it is accrued, except that an employer may require an employee hired after April 1, 2019, to wait until the ninetieth calendar day after commencing employment before using accrued earned sick time.

(3) For purposes of subsection (1), "year" shall mean a regular and consecutive twelve-month period, as determined by an employer.

(4) For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.

(5) An employer other than a small business is in compliance with this section if the employer provides any paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2). An employer that is a small business is in compliance with this section if the employer provides paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2) provided further that that employees of the small business are entitled to use paid earned sick time before using unpaid earned sick time. For purposes of this subsection, "paid leave" includes but is not limited to paid vacation days, personal days, and paid time off.

(6) An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage for that employee or the minimum wage established under the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, but not less than the minimum wage rate established in section 4 of the workforce opportunity wage act, 2014 PA 138, MCL 408.414. For any employee whose hourly wage varies depending on the work performed, the "normal hourly wage" means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.

(7) An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

Sec. 4. (1) An employer shall permit an employee to use the earned sick time accrued under section 3 for any of the following:

- (a) The employee's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.
- (b) For the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for a family member of the employee.
- (c) If the employee or the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.
- (d) For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the

family member is involved in legal action related to domestic violence or sexual assault. An employer shall not require that the documentation explain the nature of the illness or the details of the violence. If an employer chooses to require documentation for earned sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.

(5) An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an employee's or an employee's family member's medical condition as a condition of providing earned sick time under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or employee's family member, the employer shall treat that information as confidential and shall not disclose that information except to the affected employee or with the permission of the affected employee.

(6) This act does not require an employer to provide earned sick time for any purposes other than as described in this section.

Sec. 5. (1) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee shall retain all earned sick time that was accrued at the prior division, entity, or location and may use all accrued earned sick time as provided in section 4. If an employee separates from employment and is rehired by the same employer within 6 months of the separation, the employer shall reinstate previously accrued, unused earned sick time and shall permit the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement.

(2) If a different employer succeeds or takes the place of an existing employer, the successor employer assumes the responsibility for the earned sick time rights that employees who remain employed by the successor employer accrued under the original employer. Those employees are entitled to use earned sick time previously accrued on the terms provided in this act.

(3) This act does not require an employer to provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment.

Sec. 6. (1) An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. Rights protected by this act include, but are not limited to, the right to use earned sick time pursuant to this act, the right to file a complaint or inform any person about any employer's alleged violation of this act, the right to cooperate with the department in its investigations of alleged violations of this act, and the right to inform any person of his or her rights under this act.

(3) An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

(4) The protections in this section apply to any person who mistakenly but in good faith alleges a violation of this section.

(5) There is a rebuttable presumption of a violation of this section if an employer takes adverse personnel action against a person within 90 days after that person does any of the following:

- (a) Files a complaint with the department or a court alleging a violation of this act.
- (b) Informs any person about an employer's alleged violation of this act.
- (c) Cooperates with the department or another person in the investigation or prosecution of any alleged violation of this act.
- (d) Opposes any policy, practice, or act that is prohibited under this act.
- (e) Informs any person of his or her rights under this act.

Sec. 7. (1) If an employer violates this act, the employee affected by the violation, at any time within 3 years after the violation or the date when the employee knew of the violation, whichever is later, may do any of the following:

- (a) Bring a civil action for appropriate relief, including, but not limited to, payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows.
- (b) File a claim with the department, which shall investigate the claim. Filing a claim with the department is neither a prerequisite nor a bar to bringing a civil action.
- (2) (a) The director shall enforce the provisions of this act. In effectuating such enforcement, the director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints received by the department in a timely manner.
- (b) Any person alleging a violation of this chapter shall have the right to file a complaint with the department. The department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the department may disclose his or her name and identifying information as necessary to enforce this chapter or for other appropriate purposes.
- (c) Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The department shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the department.
- (d) The department shall have the power to impose penalties and to grant an employee or former employee all appropriate relief including but not limited to payment of all earned sick time improperly withheld, any and all damages incurred by the complainant as the result of violation of this act, back pay and reinstatement in the case of job loss.
- (3) If the director determines that there is reasonable cause to believe that an employer violated this act and the department is subsequently unable to obtain voluntary compliance by the employer within a reasonable time, the department shall bring a civil action as provided in subsection (1)(a) on behalf of the employee. The department may investigate and file a civil action under subsection (1)(a) on behalf of all employees of that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance by the employee of a paid or unpaid leave policy that provides fewer rights or benefits than provided by this act is void and unenforceable.
- (4) In addition to liability for civil remedies described in this section, an employer who fails to provide earned sick time in violation of this act or takes retaliatory personnel action against an employee or former employee is subject to a civil fine of not more than \$1,000.00.
- (5) An employer that willfully violates a notice or posting requirement of section 8 is subject to a civil fine of not more than \$100.00 for each separate violation.

Sec. 8. (1) An employer subject to this act shall provide written notice to each employee at the time of hiring or by April 1, 2019, whichever is later, including, but not limited to, all of the following:

- (a) The amount of earned sick time required to be provided to an employee under this act.
- (b) The employer's choice of how to calculate a "year" according to subsection 3 of section 3.
- (c) The terms under which earned sick time may be used.
- (d) That retaliatory personnel action by the employer against an employee for requesting or using earned sick time for which the employee is eligible is prohibited.
- (e) The employee's right to bring a civil action or file a complaint with the department for any violation of this act.
- (2) The notice required under subsection (1) shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the notice into such language.
- (3) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to employees, that contains the information in subsection (1). The poster displayed should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the poster into such language.
- (4) The department shall create and make available to employers notices and posters that contain the information required under subsection (1) for employers' use in complying with this section. The department shall provide such notices and posters in English, Spanish, and any other languages deemed appropriate by the department.

Sec. 9. The department shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under this act. This program must include distribution of notices and other written materials in English and in other languages to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

Sec. 10. An employer shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees. To monitor compliance with the requirements of this act, an employer shall allow the department access to those records, with appropriate notice and at a mutually agreeable time. If a question arises as to whether an employer has violated an employee's right to earned sick time under this act and the employer does not maintain or retain adequate records documenting the hours worked and earned sick time taken by the employee or does not allow the department reasonable access to those records, there is a presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence.

EXHIBIT 3

No. 66
STATE OF MICHIGAN
Journal of the Senate
99th Legislature
REGULAR SESSION OF 2018

Senate Chamber, Lansing, Wednesday, September 26, 2018.

10:00 a.m.

The Senate was called to order by the President pro tempore, Senator Tonya Schuitmaker.

The roll was called by the Secretary of the Senate, who announced that a quorum was present.

Ananich—present
Bieda—present
Booher—present
Brandenburg—present
Casperson—present
Colbeck—present
Conyers—present
Emmons—present
Green—present
Gregory—present
Hansen—present
Hertel—present
Hildenbrand—present

Hood—present
Hopgood—present
Horn—present
Hune—present
Jones—present
Knezek—present
Knollenberg—present
Kowall—present
MacGregor—present
Marleau—present
Meekhof—present
Nofs—present

O'Brien—present
Pavlov—present
Proos—present
Robertson—present
Rocca—present
Schmidt—present
Schuitmaker—present
Shirkey—present
Stamas—present
Warren—present
Young—present
Zorn—present

Senator John M. Proos of the 21st District offered the following invocation:

Heavenly Father, we gather today in this Senate chamber as men and women of faith. Faith in Your most Holy Word as we seek Your providential guidance and daily protection. We recognize that without Your protection we stand at risk of the Devil and his evil intentions.

As we seek the protection of our own souls and the souls of those whom we love, we recount the prayer of Saint Michael the Archangel and seek his intercession in the protection of each of us and our families as we pray, "Saint Michael the Archangel, defend us in battle, be our protection against the malice and snares of the devil. May God rebuke him we humbly pray; and do thou, O Prince of the Heavenly host, by the power of God, thrust into hell Satan and all evil spirits who wander through the world for the ruin of souls. Amen."

The President pro tempore, Senator Schuitmaker, led the members of the Senate in recital of the *Pledge of Allegiance*.

Motions and Communications

Senator Casperson entered the Senate Chamber.

Senator Kowall moved that Senators Meekhof and Pavlov be temporarily excused from today's session.
The motion prevailed.

Senator Hood moved that Senators Ananich and Young be temporarily excused from today's session.
The motion prevailed.

The following communication was received and read:
Office of the Senate Majority Leader

Pursuant to **Executive Order 2016-18** I appoint the following person to the **Michigan PreK-12 Literacy Commission**:
Cynthia A. Pape, Director - Read Association of Saginaw County

September 6, 2018

Sincerely,
Arlan Meekhof
30th Senate District
Senate Majority Leader

The communication was referred to the Secretary for record.

The following communications were received and read:
Office of the Auditor General

Enclosed is a copy of the following report:

- Performance audit on Children's Protective Services Investigations, Michigan Department of Health and Human Services (431-1285-16).

September 6, 2018

Enclosed is a copy of the following report:

- Report on internal control, compliance, and other matters of the Michigan Military Retirement Provisions for the fiscal year ended September 30, 2017 (071-0158-18).

September 13, 2018

Enclosed is a copy of the following report:

- Performance audit report on Modernization of Legacy IT Systems, Department of Technology, Management and Budget (071-0550-17).

September 18, 2018

Enclosed is a copy of the following report:

- Performance audit report on Transport Permit Activities, Michigan Department of Transportation (591-0171-18).

September 20, 2018

Sincerely,
Doug Ringler
Auditor General

The audit reports were referred to the Committee on Government Operations.

The following communications were received and read:
Department of State

September 11, 2018

This will acknowledge receipt of the initiative petition to enact the Improved Workforce Opportunity Wage Act which would fix minimum wages for employees within this state; prohibit wage discrimination; provide for a wage deviation board; provide for the administration and enforcement of the act; prescribe penalties for the violation of the act; and supersede certain acts and parts of acts including 2015 PA 138. The initiative petition was approved by the Michigan Senate on September 5, 2018, and filed with the Department of State, Office of the Great Seal, on September 5, 2018, at 11:45 a.m. The initiative petition was approved by the Michigan House of Representatives on September 5, 2018, and filed with the Department of State, Office of the Great Seal, on September 6, 2018, at 10:30 a.m.

The initiative petition has been assigned Public Act Number 337, Public Acts of 2018.

September 11, 2018

This will acknowledge receipt of the initiative petition to provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions. The initiative petition was approved by the Michigan Senate on September 5, 2018, and filed with the Department of State, Office of the Great Seal, on September 5, 2018, at 11:47 a.m. The initiative petition was approved by the Michigan House of Representatives on September 5, 2018, and filed with the Department of State, Office of the Great Seal, on September 6, 2018, at 10:32 a.m.

The initiative petition has been assigned Public Act Number 338, Public Acts of 2018.

Sincerely,
Ruth Johnson
Secretary of State

The communications were referred to the Secretary for record.

The following communication was received:
Office of Senator Rebekah Warren

September 4, 2018

I would like to request to be listed as a co-sponsor of SB 940, as allowed by the Senate Rule 1.110(c).

If you have any questions or need any additional information, please do not hesitate to contact me at (517) 373-2406 or senrwarren@senate.michigan.gov.

Sincerely,
Rebekah Warren
State Senator
18th District

The communication was referred to the Secretary for record.

The following communication was received:
Office of Senator Rick Jones

September 11, 2018

Please remove my name as co-sponsor of Senate Bill 1117; a bill that would enter into the interstate compact to elect the president by national popular vote.

Sincerely,
Sen. Rick Jones
24th District

The communication was referred to the Secretary for record.

The following communications were received:
Department of State

Administrative Rules
Notices of Filing

September 11, 2018

In accordance with the provisions of Section 46 of Act No. 306 of the Public Acts of 1969, being MCL 24.246, and paragraph 16 of Executive Order 1995-6, this is to advise you that the Michigan Department of Technology, Management

EXHIBIT 4

640306.1

REPORT OF THE ATTORNEY GENERAL

309

CONSTITUTIONAL LAW: Power of Initiative.
INITIATIVE: Authority of legislature over initiative petition.
LEGISLATURE: Power over initiative petition.
REFERENDUM: Effect on initiative petition enacted into law.
TEACHERS' TENURE: Mandatory tenure proposed by initiative petition.

An initiative petition proposing mandatory tenure is not subject to the rules of the Senate and House of Representatives.

Where the legislature enacts an initiative petition into law the initiative petition is not subject to referendum unless the power of referendum is invoked by the people pursuant to Article II, Sec. 9 of the Michigan Constitution of 1963.

An initiative petition enacted into law by the legislature can be amended by the legislature at a subsequent legislative session.

Before the legislature may propose a different measure upon the same subject for approval or rejection by the electors, it must reject the initiative petition.

In the event that the legislature rejects the initiative petition and wishes to propose a different measure upon the same subject, the legislature must act on both within the 40 day period as specified by the people in Article II, Sec. 9 of the Michigan Constitution of 1963.

No. 4303

March 6, 1964.

Hon. William G. Milliken
 State Senator
 Lansing, Michigan

On March 5, 1964 you conferred with the Assistant Attorney General in charge of the Education Division of this office, concerning the initiative petition proposing the enactment of a mandatory tenure law filed with the Secretary of State and transmitted to the legislature by that officer on January 8, 1964. Also present at this conference were Senators Frederic Hilbert and Robert VanderLaan. At this conference a number of questions were asked for legal opinion by this office. Your questions are answered seriatim:

1. Is the initiative petition for mandatory tenure pending presently before the Michigan legislature, a bill which is subject to the rules of the Senate and the House of Representatives?

The people have reserved to themselves the power to enact laws under the initiative power, pursuant to Article II, Sec. 9 of the Michigan Constitution of 1963. This portion of the Michigan Constitution provides in pertinent part as follows:

"Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.

"If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election. The legislature may reject any measure so proposed by initiative petition and propose a different measure upon the same subject by a ye and nay vote upon separate roll calls, and in such event both measures shall be submitted by such state officer to the electors for approval or rejection at the next general election.

"Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote. No law initiated or adopted by the people shall be subject to the veto power of the governor, and no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. Laws approved by the people under the referendum provision of this section may be amended by the legislature at any subsequent session thereof. If two or more measures approved by the electors at the same election conflict, that receiving the highest affirmative vote shall prevail."

The people have conferred the legislative power upon the Senate and House of Representatives pursuant to Article IV, Sec. 1 and have mandated that "all legislation shall be by bill," in accordance with Section 22 of Article IV.

The language of the Michigan Constitution is abundantly clear. A law proposed by the people through initiative petition is not a bill pending before the Michigan legislature. Therefore, such petitions are not subject to the rules of the respective houses of the legislature. However, each house of the legislature may, if it desires, send such proposal to a committee for recommendation that the initiative petition be enacted or rejected. See Opinions of the Attorney General, 1925-1926, page 112. When returned to the floor, the Constitution requires that by a ye and nay vote upon a roll call the members of each house act upon the petition to approve or reject it without change.

Therefore, in answer to your first question, the petition for mandatory tenure presently pending before the Michigan legislature is not subject to the rules of the Senate and the House of Representatives.

2. If the legislature should enact the initiative petition for mandatory tenure, must such law be submitted to the electorate at the next general state election to be held in accordance with Article II, Sec. 5 of the Michigan Constitution of 1963?

A plain reading of Article II, Sec. 9 of the Michigan Constitution of 1963 compels the conclusion that an initiative petition enacted into law by the legislature is not subject to referendum unless the power of referendum is invoked by the people pursuant to Article II, Sec. 9. The legislature is without constitutional authority to order a referendum by placing the law

enacted under Article II, Sec. 9 of the Michigan Constitution on the ballot subject to ratification by the people.

3. If the legislature enacts an initiative petition into law, can the legislature amend the law at a subsequent legislative session?

It is clear from Article II, Sec. 9 of the Michigan Constitution of 1963 that an initiative petition which is rejected by the legislature, in accordance with the Constitution and approved by the electors, is subject to amendment only by vote of the electors except where the initiative petition provides otherwise, or by three-fourths of the members elected to and serving in each house of the legislature, as expressly provided by the people.

The people have not imposed similar restrictions upon a law enacted by the legislature in response to initiative petitions filed with that body under Article II, Sec. 9. It must follow that the initiative petition enacted into law by the legislature in response to initiative petitions are subject to amendment by the legislature at a subsequent legislative session. It is equally clear that the legislature enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963.

4. Must the legislature accept or reject an initiative petition proposal before it can adopt a substitute proposal?

In response to this question, the language of Article II, Sec. 9 of the Michigan Constitution of 1963 is clear and unambiguous. The legislature must reject the law proposed by initiative petition before it can propose to the people a different measure upon the same subject. The people have mandated that there be a yea and nay vote upon separate roll calls for each proposal.

There appears to be no restriction in the Constitution which would prevent the legislature from considering a substitute proposal in accordance with the rules of each house of the legislature. However, the legislature must comply with the mandatory time limit of 40 days prescribed by the people both as to enacting or rejecting the initiative petition. In the event of a rejection of the initiative petition, the legislature, if it wishes, may enact a different proposal on the same subject matter but within the 40 day limit. *Leininger v. Secretary of State*, 316 Mich. 644 (1947). The people in ordering separate roll call votes by yeas or nays on each measure make this crystal clear.

It must be observed that in the event the legislature approves the law proposed by initiative petition, the Governor has no veto power over such approval.

By express language the people have proscribed the authority of the Governor over laws to be enacted under the initiative power reserved in the people as set forth in Article II, Sec. 9.

The Constitution contemplates that each house of the legislature, by recorded vote, act upon the initiative petition to enact or reject it. Since the people have withheld authority in the legislature to change the terms of the initiative petition proposed to be enacted into law, the vote to enact or reject the initiative petition must be on the petition as submitted by the people.

In effect, the legislature enacts or rejects the initiative petition by resolution of each house of the legislature. See *Decher v. Secretary of State*, 209 Mich. 565 (1920).

FRANK J. KELLEY,
Attorney General.

640313.1

CONSTITUTIONAL LAW: Investment of pension funds in corporate stock.

RETIREMENT SYSTEMS: Investment of retirement funds.

Funds accumulated to provide retirement or pension benefits for public officials and employees may be invested in the stock of any company, association or corporation as authorized by the legislature by statute.

No. 4218

March 13, 1964.

Hon. Robert E. Waldron
State Representative
The Capitol
Lansing, Michigan

Article IX, Sec. 19 of the Michigan Constitution of 1963, provides in pertinent part as follows:

"The state shall not subscribe to, nor be interested in the stock of any company, association or corporation, *except that funds accumulated to provide retirement or pension benefits for public officials and employees may be invested as provided by law; * * *.*" (Emphasis supplied)

You ask whether the language "as provided by law," found in Article IX, Sec. 19 of the Michigan Constitution of 1963, means statutes enacted by the state legislature.

You indicate in your letter that some retirement systems are provided for by the charters of municipal corporations. The charter of a city is the fundamental law of the city. *Mayor of City of Dearborn v. Dearborn Retirement Board of Trustees*, 315 Mich. 18 (1946).

Implicit in your inquiry is the question whether the charter of a municipal corporation is a "provision of law" as intended by the people in Article IX, Sec. 19 of the Michigan Constitution of 1963.

Thus, it may be concluded that the language "provided by law," found in Article IX, Sec. 19 of the Michigan Constitution of 1963 is not entirely clear in its meaning.

The object of construction of the Constitution is to ascertain and give effect to the intent of the people in ratifying the Constitution. *City of Jackson v. Commissioner of Revenue*, 316 Mich. 694 (1947).

Where the language in the Constitution is unclear, resort may be had to the debates of the framers. *Kearney v. Board of State Auditors*, 189 Mich. 666 (1915).

EXHIBIT 5

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich. Dept. of Attorney General Web Site - <http://www.ag.state.mi.us>)

STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

CONST 1963, ART 2, § 9:

Amendment of initiated law during
legislative session.

INITIATIVES:

CONSTITUTIONAL LAW:

Article 2, § 9 of the Michigan Constitution of 1963 does not prohibit the Legislature from amending a legislatively enacted initiated law during the same legislative session in which the Legislature enacted the initiated law.

Opinion No. 7306

December 3, 2018

The Honorable Arlan B. Meekhof
State Senator
The Capitol
Lansing, MI 48909

You have asked whether an initiative proposed by the people but enacted by the Legislature under article 2, § 9 of the Michigan Constitution may be amended during the same legislative session in which it was enacted.

Article 2, § 9 of the Michigan Constitution empowers the people to propose laws or to enact or reject laws, called the initiative. Const 1963, art 2, § 9. Section 9 also empowers the people to approve or reject laws enacted by the Legislature, called the referendum. *Id.* With respect to initiatives, § 9 provides in relevant part:

The people reserve to themselves the power to propose laws and to enact and reject laws, called the initiative . . . The power of initiative extends only to laws which the legislature may enact under this constitution. . . . To invoke the initiative . . . petitions signed by a number of registered electors, not less than eight percent for initiative . . . of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected shall be required. [Const 1963, art 2, § 9.]

The Legislature implemented article 2, § 9 with respect to initiatives in various sections of the Michigan Election Law, MCL 168.1 *et seq.* Under the Constitution and the Election Law, in order for the people to place an initiative on the general election ballot, the people must: (1) prepare a petition that meets the formatting requirements of MCL 168.482; (2) gather the required number of

valid signatures under article 2, § 9; and (3) file the petitions with the Secretary of State under MCL 168.472. After filing, the Board of State Canvassers must review the petition to determine whether there are sufficient valid signatures under MCL 168.476. Once the review is complete, the Board of State Canvassers must make an official declaration of the sufficiency or insufficiency of the initiative petition two months before the election at which the proposal is to be submitted. MCL 168.477(1).

If the initiative petition is certified as sufficient, the Secretary of State must present it to the Legislature for enactment or rejection under article 2, § 9:

Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. [Const 1963, art 2, § 9.]

Alternatively, if the Legislature rejects the initiative, it “may . . . propose a different measure upon the same subject” to be placed on the ballot with the people’s initiative. *Id.*

If the Legislature rejects the initiative, it must be submitted to the people for a vote at the next general election: “If the law so proposed is not enacted by the legislature within the 40 days, the state officer authorized by law shall submit such proposed law to the people for approval or rejection at the next general election[.]” Const 1963, art 2, § 9. If the initiative is approved by the people, it “shall take effect 10 days after the date of the official declaration of the vote[.]” Const 1963, art 2, § 9, MCL 168.842, MCL 168.845.

Finally, article 2, § 9 provides that initiated laws adopted by the people may, with certain limitations, be amended by the Legislature:

No law initiated or adopted by the people shall be subject to the veto power of the governor, and *no law adopted by the people at the polls under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. . . .* [Const 1963, art 2, § 9 (emphasis added).]

Relevant to your request, in the fall of 2018 the Secretary of State presented to the Legislature two initiatives for enactment or rejection under article 2, § 9. The Legislature thereafter enacted the initiatives without change within 40 session days. See 2018 PA 337,^[1] 2018 PA 338.^[2] As a result, the proposals were not submitted to the people for a vote at the November 2018 General Election.^[3]

You ask whether legislatively enacted initiatives may be amended during the same legislative session in which the Legislature enacted the initiatives.^[4]

As noted above, article 2, § 9 provides that initiated laws “adopted by the people at the polls” may “be amended . . . by a vote of the electors . . . or by three-fourths of the members elected to and serving in each house of the legislature.” Const 1963, art 2, § 9. Here, however, the Legislature enacted the initiated laws and the three-fourths vote requirement does not apply. Rather, the Legislature may amend the initiated laws it enacted by a majority vote of the members elected to and serving in each house of the Legislature. OAG, 1975-1976, No. 4932, p 240 (January 15, 1976).

Regarding the timing of amendments to initiated laws, Attorney General Frank Kelley issued an opinion in 1964 that concluded an “initiative petition enacted into law by the legislature in response to initiative petitions [is] subject to amendment by the legislature *at a subsequent legislative session*.” OAG, 1963-1964, No. 4303, pp 309, 311 (March 6, 1964) (Emphasis added). The Attorney General determined that to amend the initiated law during the same session would violate the “spirit and letter” of article 2, § 9. *Id.* The language of the Constitution and subsequent decisions by the Michigan courts, however, cast doubt on the validity of this conclusion.

As with any constitutional provision, the objective “ ‘is to determine the text’s original meaning to the ratifiers, the people, at the time of ratification.’ ” *People v Tanner*, 496 Mich 199, 223 (2014) (citation omitted). “[T]he primary rule is that of ‘common understanding,’ ” as explained by Justice Cooley:

A constitution is made for the people and by the people. The interpretation that should be given it is that which reasonable minds, the great mass of the people themselves, would give it. “For as the Constitution does not derive its force from the convention which framed, but from the people who ratified it, the intent to be arrived at is that of the people, and it is not to be supposed that they have looked for any dark or abstruse meaning in the words employed, but rather that they have accepted them in the sense most obvious to the common understanding, and ratified the instrument in the belief that that was the sense designed to be conveyed.” [*Federated Publications, Inc v Board of Trustees*, 460 Mich 75, 85 (1999) (citations and emphasis omitted).]

Any “analysis, of course, must begin with an examination of the precise language used in art[icle] 2, § 9 of [the] 1963 Constitution.” *Michigan United Conservation Clubs v Sec’y of State*, 464 Mich 359, 375 (2001) (Corrigan, J., concurring), citing *American Axle & Mfg, Inc v Hamtramck*, 461 Mich 352, 362 (2000). And to help determine the “common understanding,” the “ ‘constitutional convention debates and the address to the people, though not controlling, are relevant.’ ” *Tanner*, 496 Mich at 226, quoting *People v Nash*, 418 Mich 196, 209 (1983).

A careful review of article 2, § 9 reveals that while the people imposed express limitations on amending an initiated “law adopted by the people at the polls,” i.e., the three-fourths vote requirement, the people did not impose any express limitations on amending a legislatively enacted initiated law. Rather, article 2, § 9 states only that “any law proposed by such [initiative] petition” that “shall be *enacted by the legislature* [] shall be subject to referendum[.]” (Emphasis added). Nothing in article 2, § 9 limits the Legislature’s ability to substantively amend a legislatively enacted initiated law, or from doing so during the same legislative session in which the initiated law was enacted. In contrast, article 2, § 9 expressly imposes such a requirement on *referendums*. Section 9 provides that “[l]aws approved by the people under the referendum provision of this section may be amended by the legislature *at any subsequent session thereof*.” Const 1963, art 2, § 9 (emphasis added). No similar limitation was included for initiated laws enacted by the Legislature.

Rather, legislatively enacted initiated laws are subject to the same processes regarding amendment as legislation drafted by the Legislature. And since nothing in the Michigan Constitution prohibits the Legislature from amending legislation it drafts during the same legislative session in which it was enacted, it follows that the Legislature may do so as well with respect to an enacted initiated law. This conclusion is further supported by the Constitutional Convention record and the statement of Delegate Kuhn regarding initiatives under article 2, § 9:

If the legislature sees fit to adopt the petition of the initiative as being sent out, if the legislature in their wisdom feel it looks like it is going to be good, and they adopt it in toto, *then they have full control. They can amend it and do anything they see fit.* But if they do not, and you start an initiative petition and it goes through and is adopted by the people without the legislature doing it, then they are precluded from disturbing it.” [2 Official Record, Constitutional Convention 1961, p 2395 (emphasis added) (emphasis deleted).]

Likewise, the Michigan courts have held that legislatively enacted initiatives should be treated similarly to ordinary legislation. In *Frey v Director of the Dep’t of Social Services*, 162 Mich App 586 (1987), the Court of Appeals addressed whether the two-thirds vote requirement for giving legislation immediate effect under article 4, § 27 of the Constitution applied to an initiated law enacted by the Legislature under article 2, § 9. The initiated law included a provision stating “ ‘This Act Shall Take Immediate Effect.’ ” *Id.* at 588-589. The Legislature enacted the initiated law but did not vote to give it immediate effect. *Id.* at 589-590. The plaintiffs argued that the initiated law could not be given immediate effect because article 4, § 27 applied to the law. *Id.* at 590.

The Court of Appeals agreed. The Court examined the history and language of article 2, § 9 along with statements by the constitutional convention delegates and prior court decisions, and determined that article 4, including § 27, applies to initiated laws. *Id.* at 592-603. In conducting its analysis, the Court observed that initiated legislation is not entitled to superior treatment:

Acceptance of defendants’ position [that article 4 does not apply] would place laws proposed by the initiative on a superior, not equal, footing with legislative acts not proposed by the people. *Since everything that emerges from the Legislature is legislation, all legislative acts must be on an equal footing.* Stated in other language, once it is conceded that it is necessary to refer to article 4 in order to determine the effective date of initiated legislation that does not refer to an effective date, it becomes immediately apparent that the wall that is said to exist between article 2 and article 4 does not exist. [*Id.* at 600 (emphasis added).]

The Court further noted that “[o]ther constitutionally mandated procedures of article 4 also necessarily apply to legislation initiated under article 2, e.g., § 14 (quorum requirement), § 20 (open meetings), § 35 (publication and distribution of laws).” *Id.*, at 600 n 4. See also, *Leininger v Alger*, 316 Mich 644, 648-649 (1947) (article 4, § 24’s title-object clause applied to petitions to initiate legislation); *Automobile Club of Mich Committee for Lower Rates Now v Secretary of State (On Remand)*, 195 Mich App 613 (1992) (article 4, § 25’s republication requirement applied to petition to initiate legislation).

On appeal, the Michigan Supreme Court affirmed *Frey*, observing that it was “limited to the language of the constitution when interpreting its provisions,” and that “article 4, § 27 contain[ed] a general restriction that ‘no act’ passed by the Legislature may take immediate effect unless passed by a two-thirds vote of each house.” *Frey v Dep’t of Mgmt & Budget*, 429 Mich 315, 335 (1987). The Court concluded that article 4, § 27 “applies to initiated laws enacted by the Legislature *because it does not provide an exception for initiated laws enacted by the Legislature.*” *Id.* (emphasis added).

Similarly, there is no exception or limitation in article 2, § 9, in article 4, or in any other section of the Michigan Constitution that restricts the Legislature’s ability to amend a legislatively enacted initiated law during the same legislative session in which the Legislature enacted the law. Given the

plain text of the Constitution and the courts' later instruction that legislatively enacted initiated laws are on an equal footing with ordinary legislation, OAG No. 4303 is superseded to the extent it opined to the contrary.[5]

It is my opinion, therefore, that article 2, § 9 of the Michigan Constitution does not prohibit the Legislature from amending a legislatively enacted initiated law during the same legislative session in which the Legislature enacted the initiated law.

Sincerely,

BILL SCHUETTE
Attorney General

[1] The legislative history for the initiative is available online at [http://www.legislature.mi.gov/\(S\(kglaqzo1jtlc1zwwkptzrghop\)\)/mileg.aspx?page=initiative](http://www.legislature.mi.gov/(S(kglaqzo1jtlc1zwwkptzrghop))/mileg.aspx?page=initiative), (last accessed December 3, 2018).

[2] The legislative history for the initiative is available online at [http://www.legislature.mi.gov/\(S\(0wlzom3ku25e1ukegybqo33z\)\)/mileg.aspx?page=initiative](http://www.legislature.mi.gov/(S(0wlzom3ku25e1ukegybqo33z))/mileg.aspx?page=initiative), (last accessed December 3, 2018).

[3] Neither of these initiated laws were given immediate effect by the Legislature; thus, the laws are not effective “until the expiration of 90 days from the end of the session at which it was passed[.]” Const 1963, art 4, § 27; *Frey v Dep’t of Management and Budget*, 429 Mich 315 (1987).

[4] Regarding the legislative session, article 4, § 13 provides that the “legislature shall meet at the seat of government on the second Wednesday in January of each year at twelve o’clock noon. Each regular session shall adjourn without day, on a day determined by concurrent resolution, at twelve o’clock noon.” Const 1963, art 4, § 13. Also, “[a]ny business, bill or joint resolution pending at the final adjournment of a regular session held in an odd numbered year shall carry over with the same status to the next regular session.” *Id.*

[5] OAG No. 4303 answered four questions; only the answer to the third question is superseded.

EXHIBIT 6

Act No. 368
 Public Acts of 2018
 Approved by the Governor
 December 13, 2018
 Filed with the Secretary of State
 December 14, 2018
 EFFECTIVE DATE: 91st day after final adjournment of 2018 Regular Session

**STATE OF MICHIGAN
 99TH LEGISLATURE
 REGULAR SESSION OF 2018**

Introduced by Senator Hildenbrand

ENROLLED SENATE BILL No. 1171

AN ACT to amend 2018 PA 337, entitled "An initiation of legislation to enact the Improved Workforce Opportunity Wage Act which would fix minimum wages for employees within this state; prohibit wage discrimination; provide for a wage deviation board; provide for the administration and enforcement of the act; prescribe penalties for the violation of the act; and supersede certain acts and parts of acts including 2014 PA 138," by amending sections 3, 4, 4a, 4d, 10, and 15 (MCL 408.933, 408.934, 408.934a, 408.934d, 408.940, and 408.945).

The People of the State of Michigan enact:

Sec. 3. An employer shall not pay any employee at a rate that is less than prescribed in this act.

Sec. 4. (1) Subject to the exceptions specified in this act, the minimum hourly wage rate is:

- (a) Before September 1, 2014, \$7.40.
- (b) Beginning September 1, 2014, \$8.15.
- (c) Beginning January 1, 2016, \$8.50.
- (d) Beginning January 1, 2017, \$8.90.
- (e) Beginning January 1, 2018, \$9.25.
- (f) In calendar year 2019, or a subsequent calendar year as described in subsection (2), \$9.45.
- (g) In calendar year 2020, or a subsequent calendar year as described in subsection (2), \$9.65.
- (h) In calendar year 2021, or a subsequent calendar year as described in subsection (2), \$9.87.
- (i) In calendar year 2022, or a subsequent calendar year as described in subsection (2), \$10.10.
- (j) In calendar year 2023, or a subsequent calendar year as described in subsection (2), \$10.33.
- (k) In calendar year 2024, or a subsequent calendar year as described in subsection (2), \$10.56.

- (l) In calendar year 2025, or a subsequent calendar year as described in subsection (2), \$10.80.
- (m) In calendar year 2026, or a subsequent calendar year as described in subsection (2), \$11.04.
- (n) In calendar year 2027, or a subsequent calendar year as described in subsection (2), \$11.29.
- (o) In calendar year 2028, or a subsequent calendar year as described in subsection (2), \$11.54.
- (p) In calendar year 2029, or a subsequent calendar year as described in subsection (2), \$11.79.
- (q) In calendar year 2030, or a subsequent calendar year as described in subsection (2), \$12.05.

(2) An increase in the minimum hourly wage rate as prescribed in subsection (1) does not take effect if the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is 8.5% or greater for the calendar year preceding the calendar year of the prescribed increase. An increase in the minimum hourly wage rate as prescribed in subsection (1) that does not take effect pursuant to this subsection takes effect in the first calendar year following a calendar year for which the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is less than 8.5%.

Sec. 4a. (1) Except as otherwise provided in this act, an employee shall receive compensation at not less than 1-1/2 times the regular rate at which the employee is employed for employment in a workweek in excess of 40 hours.

(2) This state or a political subdivision, agency, or instrumentality of this state does not violate subsection (1) with respect to the employment of an employee in fire protection activities or an employee in law enforcement activities, including security personnel in correctional institutions, if any of the following apply:

(a) In a work period of 28 consecutive days, the employee receives for tours of duty, which in the aggregate exceed 216 hours, compensation for those hours in excess of 216 at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.

(b) For an employee to whom a work period of at least 7 but less than 28 days applies, in the employee's work period the employee receives for tours of duty, which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in the employee's work period as 216 bears to 28 days, compensation for those excess hours at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.

(c) If an employee engaged in fire protection activities would receive overtime payments under this act solely as a result of that employee's trading of time with another employee pursuant to a voluntary trading time arrangement, overtime, if any, shall be paid to employees who participate in the trading of time as if the time trade had not occurred. As used in this subdivision, "trading time arrangement" means a practice under which employees of a fire department voluntarily substitute for one another to allow an employee to attend to personal matters, if the practice is neither for the convenience of the employer nor because of the employer's operations.

(3) This state or a political subdivision, agency, or instrumentality of this state engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or developmentally disabled who reside on the premises does not violate subsection (1) if both of the following conditions are met:

(a) Pursuant to a written agreement or written employment policy arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted instead of the workweek of 7 consecutive days for purposes of overtime computation.

(b) For the employee's employment in excess of 8 hours in a workday and in excess of 80 hours in the 14-day period, the employee receives compensation at a rate of 1-1/2 times the regular rate, which shall be not less than the statutory minimum hourly rate at which the employee is employed.

(4) Subsections (1), (2), and (3) do not apply to any of the following:

(a) An employee employed in a bona fide executive, administrative, or professional capacity, including an employee employed in the capacity of academic administrative personnel or teacher in an elementary or secondary school. However, an employee of a retail or service establishment is not excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in the employee's workweek that the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.

(b) An individual who holds a public elective office.

(c) A political appointee of a person holding public elective office or a political appointee of a public body, if the political appointee described in this subdivision is not covered by a civil service system.

(d) An employee employed by an establishment that is an amusement or recreational establishment, if the establishment does not operate for more than 7 months in a calendar year.

(e) An employee employed in agriculture, including farming in all its branches, which among other things includes: cultivating and tilling soil; dairying; producing, cultivating, growing, and harvesting agricultural or horticultural

commodities; raising livestock, bees, fur-bearing animals, or poultry; and a practice, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage, or delivery to market or to a carrier for transportation to market or processing or preserving perishable farm products.

(f) An employee who is not subject to the minimum hourly wage provisions of this act.

(5) The director of the department of licensing and regulatory affairs shall promulgate rules under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms used in subsection (4).

(6) For purposes of administration and enforcement, an amount owing to an employee that is withheld in violation of this section is unpaid minimum wages under this act.

(7) The legislature shall annually appropriate from the general fund to each political subdivision affected by subsection (2) an amount equal to the difference in direct labor costs before and after the effective date of this act arising from any change in existing law that results from the enactment of subsection (2) and incurred by the political subdivision.

(8) In lieu of monetary overtime compensation, an employee subject to this act may receive compensatory time off at a rate that is not less than 1-1/2 hours for each hour of employment for which overtime compensation is required under this act, subject to all of the following:

(a) The employer must allow employees a total of at least 10 days of leave per year without loss of pay and must provide the compensatory time to the employee under either of the following:

(i) Applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other written agreement between the employer and representative of the employee.

(ii) If employees are not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to its employees that provides employees with a voluntary option to receive compensatory time off for overtime work when there is an express, voluntary written request to the employer by an individual employee for compensatory time off in lieu of overtime pay before the performance of any overtime assignment.

(b) The employee has not earned compensatory time in excess of the applicable limit prescribed by subdivision (d).

(c) The employee is not required as a condition of employment to accept or request compensatory time. An employer shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce an employee for the purpose of interfering with the employee's rights under this section to request or not request compensatory time off in lieu of payment of overtime compensation for overtime hours, or requiring an employee to use compensatory time. In assigning overtime hours, an employer shall not discriminate among employees based upon an employee's choice to request or not request compensatory time off in lieu of overtime compensation. An employer who violates this subsection is subject to a civil fine of not more than \$1,000.00.

(d) An employee may not accrue more than a total of 240 hours of compensatory time. An employer shall do both of the following:

(i) Maintain in an employee's pay record a statement of compensatory time earned by that employee in the pay period that the pay record identifies.

(ii) Provide an employee with a record of compensatory time earned by or paid to the employee in a statement of earnings for the period in which the compensatory time is earned or paid.

(e) Upon the request of an employee who has earned compensatory time, the employer shall, within 30 days following the request, provide monetary compensation for that compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work.

(f) An employee who has earned compensatory time authorized under this subsection shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work. A terminated employee's receipt of or eligibility to receive monetary compensation for earned compensatory time shall not be used by either of the following:

(i) The employer to oppose an employee's application for unemployment compensation under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(ii) The state to deny unemployment compensation or diminish an employee's entitlement to unemployment compensation benefits under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(g) An employee shall be permitted to use any compensatory time accrued under this subsection for any reason unless use of the compensatory time for the period requested will unduly disrupt the operations of the employer.

(h) Unless prohibited by a collective bargaining agreement, an employer may terminate a compensatory time plan upon not less than 60 days' notice to employees.

(i) As used in this subsection:

(i) "Compensatory time" and "compensatory time off" mean hours during which an employee is not working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.

(ii) "Overtime assignment" means an assignment of hours for which overtime compensation is required under this act.

(iii) "Overtime compensation" means the compensation required under this section.

Sec. 4d. (1) The minimum hourly wage rate of an employee is 38% of the minimum hourly wage rate established in section 4 if all of the following occur:

(a) The employee receives gratuities in the course of his or her employment.

(b) If the gratuities described in subdivision (a) plus the minimum hourly wage rate under this subsection do not equal or exceed the minimum hourly wage rate otherwise established under section 4, the employer pays any shortfall to the employee.

(c) The gratuities are proven gratuities as indicated by the employee's declaration for purposes of the federal insurance contribution act, 26 USC 3101 to 3128.

(d) The employee was informed by the employer of the provisions of this section.

(2) As used in this section, "gratuities" means tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered to that guest, patron, or customer and that the employee reports to the employer for purposes of the federal insurance contributions act, 26 USC 3101 to 3128.

Sec. 10. (1) This act does not apply to an employer that is subject to the minimum wage provisions of the fair labor standards act of 1938, 29 USC 201 to 219, unless those federal minimum wage provisions would result in a lower minimum hourly wage than provided in this act. Each of the following exceptions applies to an employer who is subject to this act only by application of this subsection:

(a) Section 4a does not apply.

(b) This act does not apply to an employee who is exempt from the minimum wage requirements of the fair labor standards act of 1938, 29 USC 201 to 219.

(2) Notwithstanding subsection (1), an employee shall be paid in accordance with the minimum wage and overtime compensation requirements of sections 4 and 4a if the employee meets either of the following conditions:

(a) He or she is employed in domestic service employment to provide companionship services as defined in 29 CFR 552.6 for individuals who, because of age or infirmity, are unable to care for themselves and is not a live-in domestic service employee as described in 29 CFR 552.102.

(b) He or she is employed to provide child care, but is not a live-in domestic service employee as described in 29 CFR 552.102. However, the requirements of sections 4 and 4a do not apply if the employee meets all of the following conditions:

(i) He or she is under the age of 18.

(ii) He or she provides services on a casual basis as defined in 29 CFR 552.5.

(iii) He or she provides services that do not regularly exceed 20 hours per week, in the aggregate.

(3) This act does not apply to persons employed in summer camps for not more than 4 months or to employees who are covered under section 14 of the fair labor standards act of 1938, 29 USC 214.

(4) This act does not apply to agricultural fruit growers, pickle growers and tomato growers, or other agricultural employers who traditionally contract for harvesting on a piecework basis, as to those employees used for harvesting, until the board has acquired sufficient data to determine an adequate basis to establish a scale of piecework and determines a scale equivalent to the prevailing minimum wage for that employment. The piece rate scale shall be equivalent to the minimum hourly wage in that, if the payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity, he or she receives an amount not less than the hourly minimum wage.

(5) This act does not apply to an individual who is 16 years of age or older but less than 21 years of age in his or her capacity as an ice hockey player for a junior ice hockey team that is a member of a regional, national, or international junior ice hockey league.

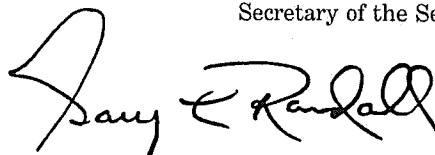
(6) Notwithstanding any other provision of this act, subsection (1)(a) and (b) and subsection (2) do not deprive an employee or any class of employees of any right that existed on September 30, 2006 to receive overtime compensation or to be paid the minimum wage.

Sec. 15. (1) This act shall supersede any acts or parts of acts inconsistent with or in conflict with this act, but only to the extent of such inconsistency or conflict.

(2) Any reference in any law to the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, shall be considered a reference to this act.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor

EXHIBIT 7

Act No. 369
Public Acts of 2018
Approved by the Governor
December 13, 2018
Filed with the Secretary of State
December 14, 2018

EFFECTIVE DATE: 91st day after final adjournment of 2018 Regular Session

**STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018**

Introduced by Senator Shirkey

ENROLLED SENATE BILL No. 1175

AN ACT to amend 2018 PA 338, entitled "An initiation of legislation to provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions," by amending the title and sections 1, 2, 3, 4, 5, 7, 8, 10, 11, and 14 (MCL 408.961, 408.962, 408.963, 408.964, 408.965, 408.967, 408.968, 408.970, 408.971, and 408.974); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to require certain employers to provide certain employees with paid medical leave for personal or family health needs, as well as purposes related to domestic violence and sexual assault; to specify the conditions for accruing and using paid medical leave; to prescribe powers and duties of certain state departments, agencies, and officers; and to provide remedies and sanctions.

Sec. 1. This act shall be known and may be cited as the "paid medical leave act".

Sec. 2. As used in this act:

- (a) "Benefit year" means any consecutive 12-month period used by an employer to calculate an eligible employee's benefits.
- (b) "Department" means the department of licensing and regulatory affairs.
- (c) "Director" means the director of the department or the director's designee.
- (d) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(e) "Eligible employee" means an individual engaged in service to an employer in the business of the employer and from whom an employer is required to withhold for federal income tax purposes. Eligible employee does not include any of the following:

(i) An individual who is exempt from overtime requirements under section 13(a)(1) of the fair labor standards act, 29 USC 213(a)(1).

(ii) An individual who is not employed by a public agency, as that term is defined in section 3 of the fair labor standards act, 29 USC 203, and who is covered by a collective bargaining agreement that is in effect.

(iii) An individual employed by the United States government, another state, or a political subdivision of another state.

(iv) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to title II of the railway labor act, 45 USC 151 to 188.

(v) An employee as described in section 201 of the railway labor act, 45 USC 181.

(vi) An employee as defined in section 1 of the railroad unemployment insurance act, 45 USC 351.

(vii) An individual whose primary work location is not in this state.

(viii) An individual whose minimum hourly wage rate is determined under section 4b of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934b.

(ix) An individual described in section 29(1)(l) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.29.

(x) An individual employed by an employer for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer.

(xi) A variable hour employee as defined in 26 CFR 54.4980H-1.

(xii) An individual who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year.

(f) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 50 or more individuals. Employer does not include the United States government, another state, or a political subdivision of another state.

(g) "Family member" includes all of the following:

(i) A biological, adopted or foster child, stepchild or legal ward, or a child to whom the eligible employee stands in loco parentis.

(ii) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an eligible employee or an eligible employee's spouse or an individual who stood in loco parentis when the eligible employee was a minor child.

(iii) An individual to whom the eligible employee is legally married under the laws of any state.

(iv) A grandparent.

(v) A grandchild.

(vi) A biological, foster, or adopted sibling.

(h) "Health care provider" means that term as defined in section 101 of the family and medical leave act, 29 USC 2611.

(i) "Paid medical leave" means time off from work that is provided by an employer to an eligible employee that can be used for the purposes described in section 4(1).

(j) "Sexual assault" means any act that violates section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

Sec. 3. (1) An employer shall provide paid medical leave to each of the employer's eligible employees in this state.

(2) Except as otherwise provided in subsection (3), an eligible employee must accrue paid medical leave at a rate of at least one hour of paid medical leave for every 35 hours worked. An employer is not required to allow an eligible employee to accrue more than 1 hour of paid medical leave in a calendar week. An employer may limit an eligible employee's accrual of paid medical leave to not less than 40 hours per benefit year. An employer is not required to allow an eligible employee to carry over more than 40 hours of unused accrued paid medical leave from one benefit year to another benefit year. An employer is not required to allow an eligible employee to use more than 40 hours of paid family medical leave in a single benefit year.

(3) As an alternative to subsection (2), an employer may provide at least 40 hours of paid medical leave to an eligible employee at the beginning of a benefit year. For eligible employees hired during a benefit year, an employer may prorate paid medical leave provided under this subsection. If an employer elects to provide paid medical leave to an eligible employee pursuant to this subsection, the employer is not required to allow the eligible employee to carry over any of that paid medical leave to another benefit year.

(4) Paid medical leave as provided in this section shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. An employee may use accrued paid medical leave as it is accrued, except that an employer may require an employee to wait until the ninetieth calendar day after commencing employment before using accrued paid medical leave.

(5) There is a rebuttable presumption that an employer is in compliance with this act if the employer provides at least 40 hours of paid leave to an eligible employee each benefit year.

(6) An employer shall pay each eligible employee using paid medical leave at a pay rate equal to the greater of either the normal hourly wage or base wage for that eligible employee or the minimum wage rate established in section 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934. An employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities in the calculation of an eligible employee's normal hourly wage or base wage.

(7) As used in this section:

(a) "Hours worked" does not include, unless otherwise included by an employer, hours taken off from work by an eligible employee for paid leave.

(b) "Paid leave" includes, but is not limited to, paid vacation days, paid personal days, and paid time off.

Sec. 4. (1) An employer shall allow an eligible employee to use paid medical leave accrued under section 3 for any of the following:

(a) The eligible employee's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee's mental or physical illness, injury, or health condition; or preventative medical care for the eligible employee.

(b) The eligible employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for a family member of the eligible employee.

(c) If the eligible employee or the eligible employee's family member is a victim of domestic violence or sexual assault, the medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.

(d) For closure of the eligible employee's primary workplace by order of a public official due to a public health emergency; for an eligible employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or if it has been determined by the health authorities having jurisdiction or by a health care provider that the eligible employee's or eligible employee's family member's presence in the community would jeopardize the health of others because of the eligible employee's or family member's exposure to a communicable disease, whether or not the eligible employee or family member has actually contracted the communicable disease.

(2) An eligible employee shall, when requesting to use paid medical leave, comply with his or her employer's usual and customary notice, procedural, and documentation requirements for requesting leave. An employer shall give an eligible employee at least 3 days to provide the employer with documentation. This act does not prohibit an employer from disciplining or discharging an eligible employee for failing to comply with the employer's usual and customary notice, procedural, and documentation requirements for requesting leave.

(3) Paid medical leave must be used in 1-hour increments unless the employer has a different increment policy and the policy is in writing in an employee handbook or other employee benefits document.

(4) An employer may require an eligible employee who is using paid medical leave because of domestic violence or sexual assault to provide documentation that the paid medical leave has been used for that purpose. The following types of documentation are satisfactory for purposes of this subsection:

(a) A police report indicating that the eligible employee or the eligible employee's family member was a victim of domestic violence or sexual assault.

(b) A signed statement from a victim and witness advocate affirming that the eligible employee or eligible employee's family member is receiving services from a victim services organization.

(c) A court document indicating that the eligible employee or eligible employee's family member is involved in legal action related to domestic violence or sexual assault.

(5) An employer shall not require that the documentation provided under subsection (4) explain the details of the violence. An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an eligible employee's or an eligible employee's family member's medical condition as a condition of providing paid medical leave under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an eligible employee or eligible employee's family member, the employer shall treat that

information as confidential and shall not disclose that information except to the affected eligible employee or with the permission of the affected eligible employee.

(6) This act does not require an employer to provide paid medical leave for any purposes other than as described in this section.

Sec. 5. (1) If an eligible employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the eligible employee retains all paid medical leave that was accrued at the prior division, entity, or location and may use the accrued paid medical leave pursuant to section 4. If an eligible employee separates from employment and is rehired by the same employer, the employer is not required to allow the eligible employee to retain any unused paid medical leave that the eligible employee previously accumulated while working for the employer.

(2) This act does not require an employer to provide financial or other reimbursement to an eligible employee for accrued paid medical leave that was not used before the end of a benefit year or before the eligible employee's termination, resignation, retirement, or other separation from employment.

Sec. 7. (1) If an employer violates this act, the eligible employee affected by the violation, at any time within 6 months after the violation may file a claim with the department.

(2) The director shall enforce this act. The director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints received by the department in a timely manner.

(3) Upon receiving a complaint alleging a violation of this act, the department shall investigate the complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the department determines that a violation has occurred, it shall issue to the offending person a notice of violation and the relief required of the offending person. The department shall prescribe the form and wording of notices of violation, which must include the method of appealing the determination of the department.

(4) The department may impose penalties and grant an eligible employee or former eligible employee payment of all paid medical leave improperly withheld. The department is the trustee for the eligible employee or former eligible employee and shall distribute and account for money collected under this subsection.

(5) An employer that fails to provide paid medical leave in violation of this act is subject to an administrative fine of not more than \$1,000.00.

(6) An employer that willfully violates the posting requirement of section 8 is subject to an administrative fine of not more than \$100.00 for each separate violation.

Sec. 8. (1) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to eligible employees, that contains all of the following information:

- (a) The amount of paid medical leave required to be provided to an eligible employee under this act.
- (b) The terms under which paid medical leave may be used.
- (c) The eligible employee's right to file a complaint with the department for any violation of this act.

(2) The department shall create and make available to employers, at no cost, posters that contain the information required under subsection (1) for employers' use in complying with this section.

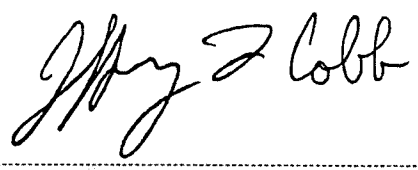
Sec. 10. An employer shall retain for not less than 1 year records documenting the hours worked and paid medical leave taken by eligible employees. Those records shall be open to inspection by the director at any reasonable time.

Sec. 11. This act does not do any of the following:

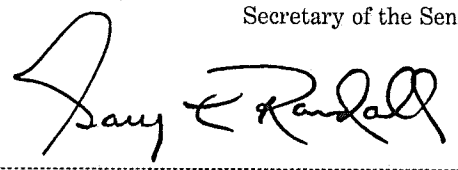
- (a) Prohibit an employer from providing more paid medical leave than is required under this act.
- (b) Diminish any other rights provided to any eligible employee under a collective bargaining agreement.
- (c) Subject to section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act.
- (d) Prohibit an employer from establishing a policy that permits an eligible employee to donate unused accrued paid medical leave to another eligible employee.

Sec. 14. If any portion of this act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect, impair, or invalidate the other portions or applications of the act that can be given effect without the invalid portion or application, and to this end the provisions of this act are declared to be severable. If a federal paid medical leave mandate is enacted, this act does not apply as of the effective date of the mandate.

Enacting section 1. Sections 6, 9, and 13 of 2018 PA 338, MCL 408.966, 408.969, and 408.973, are repealed.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor

EXHIBIT 8



THE SENATE
STATE OF MICHIGAN

STEPHANIE CHANG
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February 13, 2019

State of Michigan
The Honorable Dana Nessel, Attorney General
Attn: Opinion Department
G. Mennen Williams Building
P.O. Box 30212
Lansing, MI 48909

RE: Request for Formal Opinion

Dear Attorney General Nessel:

I write today regarding Former Attorney General Schuette's Opinion No. 7306 regarding the legislative enactment and amendment of laws proposed by initiative petition. Opinion No. 7306 interprets Article II, Section 9 of the Michigan Constitution of 1963 in a manner that poses serious threats to the constitutional power of initiative reserved to the people.

This issue has received widespread attention over the last year due to the legislative enactment and amendment of laws proposed by initiative petition. One proposal sought to create a new Michigan minimum wage law. The other proposal sought to provide employees with the ability to earn paid sick time. In May 2018, organizers filed nearly 400,000 signatures in support of each proposal. After review, the Board of State Canvassers certified both proposals for the November 2018 general election ballot.

However, upon receipt by the Legislature, majority leadership implemented a plan to enact both proposals to keep them off the ballot and then amend them during the "Lame Duck" session after the election. The Legislature enacted Public Acts 337 and 338 of 2018, and then, in the same legislative session, significantly amended the laws resulting in enactment of Public Acts 368 and 369 of 2018. The net effect of these amendments was the elimination of the ability for many employees to earn paid sick time, and substantial and sweeping changes to the minimum wage law proposed by initiative petition. These laws are set to take effect in March 2019, and many questions have been raised regarding the constitutionality of the action taken by the Legislature in enacting and amending the laws.

Under Article II, Section 9, the people have reserved to themselves the ability to enact laws using ballot initiatives. Specifically, Article II, Section 9 provides in part:

“Any law proposed by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. If any law proposed by such petition shall be enacted by the legislature it shall be subject to referendum, as hereinafter provided.”

The plain language of this clause contains both a mandate and a prohibition. It mandates that if the Legislature takes action, it either enact or reject an initiative petition; and, further, it prohibits the Legislature from changing or amending an initiative petition. Alternatively, the Legislature can reject an initiative petition and propose a different measure on the same subject, in which case the initiated proposal and the legislative proposal both go on the ballot. In any event, the plain language of Article II, Section 9 prohibits the exact legislative action at issue here – the enactment and amendment of a law proposed by initiative petition in the same legislative session.

In direct contravention of this plain reading, in Opinion No. 7306, Former Attorney General Schuette concluded that “nothing in Article II, Section 9 limits the Legislature’s ability to substantively amend a legislatively enacted initiated law, or from doing so during the same legislative session in which the initiated law was enacted.” This conclusion is contrary to the plain language of Article II, Section 9, fails to give effect to every word and phrase in Article II, Section 9, and is inconsistent with the spirit and structure of the constitutional provision.

Indeed, the plain language of Article II, Section 9 expressly limits the Legislature’s ability to amend a legislatively enacted initiated law by stating that a “law proposed by initiative petition shall either be enacted or rejected by the legislature **without change or amendment.**” (Emphasis added). Former Attorney General Schuette’s conclusion that a law proposed by initiative petition may be enacted and amended by the Legislature in the same legislative session disregards the prohibition on such action in the plain language of Article II, Section 9.

In Opinion No. 4303, Former Attorney General Frank Kelley determined that “it is [] clear that the legislature in enacting an initiative petition proposal cannot amend the law so enacted at the same legislative session without violation of the spirit and letter of Article II, Sec. 9 of the Michigan Constitution of 1963.” Opinion No. 4303 correctly construed the powers of the Legislature conferred by Article II, Section 9, and properly preserves the powers of the people regarding laws proposed by initiative petition.

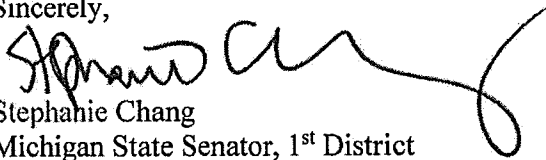
Since Former Attorney General Kelley’s opinion, there has been no amendment of this section or other change in law that would warrant a deviation from the Kelley opinion.

With the aforementioned in mind, I ask for your formal opinion as to the following questions:

- 1) Does Article II, Section 9 of the Michigan Constitution of 1963 prohibit the Legislature from enacting a voter-initiated law and subsequently amending it at the same legislative session?
- 2) Were Public Acts 337 and 338 of 2018 enacted and amended in the same legislative session in violation of Article II, Section 9 of the Michigan Constitution of 1963?

Thank you in advance for your assistance with this request. Please do not hesitate to contact my office if you have questions or need more information. If you are unwilling or unable to issue an opinion in response to my request, I humbly ask that you please provide, in detail, the reason or reasons for your denial.

Sincerely,



Stephanie Chang
Michigan State Senator, 1st District

EXHIBIT 9

76015.1

240

REPORT OF THE ATTORNEY GENERAL

CONSTITUTION OF MICHIGAN: Art 2, § 9

INITIATIVE AND REFERENDUM: Amendment of act adopted by initiative.

If a measure proposed by initiative petition is enacted by the legislature within 40 session days without change or amendment, the legislature may amend or repeal such measure by majority votes in each house as specified in Const 1963.

Where, however, the legislature has not enacted a legislative proposal initiated by the people within the 40 session day period and the proposal is adopted by the people, a majority of three-fourths of the members elected to and serving in each house of the legislature is required to amend or repeal that law.

Opinion No. 4932

January 15, 1976.

Honorable Jeffrey D. Padden
State Representative
The Capitol
Lansing, Michigan 48901

You have asked for my opinion concerning legislative initiative pursuant to Mich Const 1963, art 2, § 9.

The third paragraph of said constitutional provision provides in relevant part:

"Any law *proposed* by initiative petition shall be either enacted or rejected by the legislature without change or amendment within 40 session days from the time such petition is received by the legislature. . . ." [Emphasis added]

You ask whether an extraordinary majority is required to enact into law such a popularly initiated proposal.

It is my opinion that, had the drafters of the Constitution intended that initial enactment of legislation proposed by initiative petition under paragraph 3 would require extraordinary majorities in each house, explicit language to that effect would have been utilized. I interpret the absence of such language as signifying an intent that such laws be adopted by those majorities of the members elected to and serving in each house of the legislature specified elsewhere in Mich Const 1963.

The fifth paragraph of Const 1963, art 2, § 9, states in relevant part:

". . . no law *adopted by the people at the polls* under the initiative provisions of this section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by three-fourths of the members elected to and serving in each house of the legislature. . . ." [Emphasis added]

If a measure proposed by initiative petition is enacted by the legislature within 40 session days without change or amendment, the legislature can amend or repeal such a measure by majority votes in each house as specified elsewhere in Mich Const 1963. In contrast, however, where the legislature

has not enacted an initiated legislative proposal within the 40 session day period and the matter is submitted to the people for consideration at a general election, after such measure has been adopted by the people at the polls, an extraordinary majority of three-fourths of the members elected to and serving in each house of the legislature is required to amend or repeal it.

FRANK J. KELLEY,
Attorney General.

76 0116.1

CITIZENSHIP: Teacher's Certificate

TEACHERS: Citizenship requirement for permanent certification

The statutory requirement of United States citizenship as a qualification for a certificate as a school teacher is unconstitutional.

Opinion No. 4925

January 16, 1976.

Dr. John W. Porter
Superintendent of Public Instruction
Michigan Department of Education
Lansing, Michigan

You have requested my opinion whether the requirement of MCLA 340.852; MSA 15.3852, that one be a United States citizen to qualify for permanent certification as a school teacher is constitutional.

MCLA 340.852; MSA 15.3852, in pertinent part, provides:

" . . . No permanent certificate qualifying a person to teach in the public schools of this state shall be granted to any person who is not a citizen of the United States. . . ."

The United States Supreme Court has stated:

" . . . The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal Government. *Fong Yue Ting v United States*, 149 U.S. 698, 713. The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country under the authority of the acts of Congress, instead of enjoying in a substantial sense and in their full scope the privileges conferred by the admission, would be segregated in such of the States as chose to offer hospitality."

Truax v Raich, 239 US 33, 42; 36 S Ct 7, 11; 60 L Ed 131, 135 (1915).

More recently, in *In re Griffiths*, 413 US 717; 93 S Ct 2851; 37 L Ed 2d 910 (1973), the Supreme Court considered the constitutionality of the citizenship requirement for admission to the Connecticut Bar. The Court ruled that state classifications based on alienage were "inherently suspect." Thereupon, the Court stated: